File No. 340

19 32

Collection No.

Mysore Residency

Bangalore.

Pros. Serial Nos. 1-19

S. N. 14 & 15
destroyed 17/5/65

Subject.

Incometax Review petition of Messrs. D.Syed Oosman and Co (No.1 of 1932-33) of Bangalore.

Previous References.

Later References.

Blue).

8S&P—(M-184)—11-8-34—60,000.

Income-tax Appeal Petn. No.1/1932-33.

Messrs. D. Syed Oosman & Co.,
New Market Square, C. & M. Station,
Bangalore. Appellants.

P.U.C.I. S.N.1 (A)
" II. S.N.2 (A) 1

Appeal petition presented on the 20th October, 1932, by Mr. L.S. Raju, Advocate, Bangalore.

Staty petition presented on -do- by -do-

S.N.1
~~P.U.C.I~~ is an appeal against the order of the Assistant Commissioner of Income-tax (in his capacity as the Income-tax Officer) assessing the firm of Messrs. D. Syed Oosman & Co., Bangalore, for 1932-33 on an income of Rs. 50,339/-. The appeal is in time and has been duly stamped. The assessment records may first be called for. Draft I submitted.

2 S.N.2
~~P.U.C.II~~ is an application presented by the appellants praying that the Income-tax Officer may be directed to stop collection of the tax pending disposal of the appeal (P.U.C.I). Under section 45, "when an assessee has presented an appeal...., the Income-tax Officer may in his discretion treat the assessee as not being in default as long as such appeal is undisposed of" Ordinarily, therefore, the authority that should stop collection of the tax, pending disposal of an appeal, is the Income-tax Officer himself and not the Commissioner or the Assistant Commissioner, before whom such appeal may be pending. If the I.T.O. refuses to stay collection of the tax, the Commissioner can, of course, revise the I.T.O.'s order under section 33, if he considers it necessary to do so. In the present case, however, the petitioner does not allege that the I.T.O. has refused to pass an order in his favour. In fact, the petition

to

to the Commissioner was presented even before the tax had actually fallen due (the tax was due on 25-10-1932, whereas the petition was presented on 20-10-1932). In the circumstances, the appellant may, if approved, be informed that he may ~~first~~ apply to the Income-tax Officer for an order under section 45 staying collection of the tax till the appeal before the Commissioner is disposed of. The petition may be rejected. Draft II for approval.

(From para. 1).

Commissioner.

Please speak 30/10

(A) S.N.3. P.U.C.III

Petition dated the 29th October, 1932, from Messrs. D. Syed Oosman & Co., New Market Square, Bangalore.

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(3)

Since writing the above note, the appellants have filed another petition (~~P.U.C.III~~ S.N.3), from which it will be seen that the Income-tax Officer has subsequently passed an order refusing to postpone the collection of the tax until the appeal before the Commissioner is disposed of. The appellants now pray that the said order may be reviewed by the Commissioner under section 33 and favourable orders passed.

(H) S.N.1 Draft I

(4)

Although the Commissioner has unlimited powers to review proceedings of subordinate authorities and make such orders as may be necessary to secure the ends of justice, yet, ordinarily, he does not interfere with the discretionary powers of the Income-tax Officer in matters relating to collection of tax, etc, unless he considers that there will be a grave miscarriage of justice

justice if he does not revise his subordinate's orders.

5

In this connection, reference is invited to the Board's instructions at para 91 (page 221) of the Income-tax Manual regarding the responsibility of the Income-tax Officer in the prompt recovery of the tax due to Govt. In para 2 of the appeal petition (P.U.C.I), the assessees state that their income for the year under assessment was only Rs.1306-6-4, but on page 5 of the same petition, they admit their liability to tax on an estimated income of Rs.13,420-0-4. The tax due on Rs.13,420/- will be about Rs.1048/-, whereas, the amount actually demanded by the I.T.O. is Rs.9398/3/0. The disputed portion of the tax therefore, amounts to more than Rs.8000/- and it does not appear likely that the appellants will succeed to this extent, in any event.

6

It is not alleged by the appellants that they will suffer irreparable loss or damage if collection of the tax is not stayed, nor do they plead inability to pay the whole amount at once. A review of the order has been sought only on the ground that the demand made, namely, Rs.9,398-3-0 is "very heavy and excessive and that it is necessary, expedient and essential in the interest of justice" that, pending the disposal of the appeal petition, the recovery of the tax should be stayed.

7

In case the appeal results in a reduction of the assessment now made, the appellants will have no difficulty in obtaining the necessary refund from Govt., without undue delay.

8

In the above circumstances, it is for consideration whether the present petition (P.U.C.III) may be rejected, on the ground that the Commissioner sees no reason to interfere with the orders passed by the I.T.O.

In

S.N.3 2(A)

In view of ~~P.U.C.III,~~ no orders are necessary on S.N.2 ~~P.U.C.II.~~ Draft II need not therefore issue. Draft I calling for the assessment records may kindly be approved.

From para.1)

3-11-32

Commissioner.

(9) Please speak

(10) Draft I is issue

*Issued No.7749 dated 17-11-32. S.N.5

(11) Petition (P.U.C. III) is rejected.

(12) Draft submitted.

15-11-32

Comm'r.

(13) As amended 17/11

S.N.6 Issued No.7869, dated 21-11-32.

Income-tax Appeal Petition No.1 of 1932-33.

Appellants:- Messrs. D. Syed Oosman & Co., Bangalore.

(A) S.N.1. Memorandum of Appeal dated the 20th October, 1932 filed by Messrs. Syed Oosman and Co.

(E) S.N.7. Letter No.F. dated the 22nd November, 1932 from the Collector and Income-tax Officer, Civil and Military Station, Bangalore.

~~Pet~~ (B/B) S.N.8. Petition filed by the appellants on the 30th January, 1933.

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(14) This is an appeal preferred by the well known firm of Messrs. D. Syed Oosman and Co., wholesale and retail dealers in oilmanstores, etc., New Market Square, (H)+(B) Bangalore, against their assessment ~~their assessment~~ for 1932-33 on an estimated income of Rs.50,000/- from business and Rs.399/- from property, made under section (H) 23(3) of the Act. The assessment order was passed by the Collector, acting as I.T.O., and an appeal, therefore, lies to the Commissioner under section 30(1).

(15) The various considerations which led the Collector to reject the accounts produced by the firm and to assess them on an estimated income of Rs.50,000/- from business (D) are fully set out in the I.T.O's note dated the 24th September, 1932 and in paragraph 2 of the Collector's letter

(E)

letter dated the ~~24th~~ 22nd November, 1932.

(I.G)

(E)

The facts mentioned in paragraphs 3 and 4 of the letter referred to above prove beyond doubt that the firm had deliberately furnished inaccurate particulars of their income and thereby returned it [redacted] below its real amount (section 28) and that they had made a false verification (section 52) in the return of income filed by them under section 22 of the Act. The assessees have thereby rendered themselves liable to a fine under section 28 for concealment of income, or, in the alternative, to a prosecution under section 52 for making a false return, an offence punishable under section 177, I.P.C., with simple imprisonment which may extend to 6 months, or with fine which may extend to one thousand rupees, or with both. The fine under section 28 can be imposed either by the Income-tax Officer or the Assistant Commissioner or the Commissioner, as the case may be, in the course of any proceedings under the Act, whereas a prosecution under section 52 can be sanctioned only at the instance of the Assistant Commissioner (in this case the Commissioner).

(R)

≠ Sec. 28(1).

§ Sec. 53.

(P 7)

Para 4 of (E)

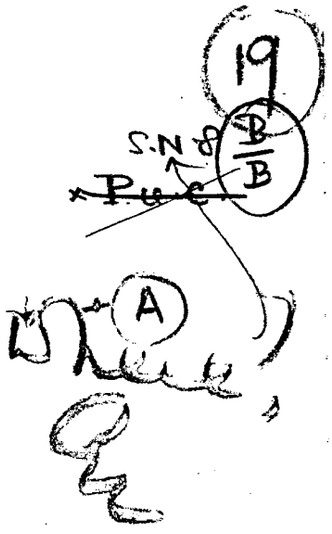
The Collector says that the definite information referred to in paragraph 3 of his letter (E) was not in his hands at the time he made the assessment and that, if it were, he would have considered favourably the suggestion

made by the Income-tax Officer to impose a penalty under section 28. Now that the assessment has been brought under appeal and definite information is available that the assessees have deliberately furnished false accounts, the Collector considers that this is a fit case for prosecution, or, in the alternative, for the levy of the maximum penalty under section 28. The Collector also refers in this connection to the Board's recent instructions regarding the desirability of prosecuting a few prominent assessees who have been evading payment of income-tax.

In their appeal petition, the assessees have practically admitted their liability to be assessed on an income of Rs.13,420-0-4 from business, as against Rs.907-6-4 originally returned by them and Rs.50,000/- estimated by the Income-tax Officer. The grounds of appeal are mainly that the system of accounting adopted by the assessees has been accepted in previous years, that usuage, practice and precedent entitled them to be assessed on certain fixed percentages on the total turnover of the business, that no opportunity was afforded to them to meet the Income-tax Officer's objections to the accounts submitted by them, and that the procedure adopted by the Income-tax Officer was not governed by judicial considerations. They have also offered to have their

entire

entire accounts independently audited by the Income-tax Department with a view to ascertain their real income.



The appeal petition need not, however, be considered now, as the firm have since filed an application stating that they do not wish to proceed with the appeal and praying that it may be returned to them, as they want to file a review petition before the Commissioner of Income-tax. Why the appeallants have now resorted to this course is not clear. Perhaps, they feel that they have a weak case for an appeal and prefer to ask the Commissioner for a sympathetic consideration of their case under section 33. It does not appear to be necessary to <u>return</u> the appeal petition to the assessees: we may, instead, dismiss it on the ground that the appellants do not wish to proceed with it.

(A)

(20)

We have next to decide whether, and, if so, in what manner, we should proceed against the assessees for returning a deliberately false income. As already stated, two courses are open - a penalty under section 28 or a prosecution under section 52. Only one or the other of the two courses can be availed of, as under section 28(4), no prosecution for an offence under the Income-tax Act can be instituted in respect of the same facts on which a penalty has been levied under section 28.

The

(21)

The usual objections to prosecutions are, as pointed out by the Board, the extreme uncertainty of securing a conviction and the lenient view usually taken by courts of offences under the Income-tax Act which is apt to lead them to impose ridiculously light sentences. The Board also felt that, in view of the behaviour of certain prominent people, it was somewhat optimistic to hope that the disgrace of even a successful prosecution would really have any deterrent effect. In his letter dated the 13th June, 1932, Sir Alexander Tottenham informed us that the Board had decided not to fetter the discretion of ~~two~~ Commissioners of Income-tax by issuing any hard and fast instructions on the subject, but that the Board trusted that Commissioners would not lose sight of the fact that prosecution was one of the weapons in the Department's armoury and would duly weigh, whenever occasion arose, the pros and cons of making use of it.

(22)

The case under consideration appears to be one in which we can reasonably be sure of securing a conviction. There is clear evidence to show that the return filed by the firm was false and that they knew that it was so. It can also be proved beyond doubt that some at least of the books produced by the firm before the Income-tax Officer

Officer were not the real books maintained in the usual course of business but false ones deliberately manufactured for income-tax purposes. Messrs. D. Syed Osman & Co., are one of the oldest and biggest concerns in Bangalore and their prosecution cannot but attract public attention.

(23) There are, however, certain other considerations which, it is submitted, would seem to favour the imposition of a sufficiently severe penalty in preference to a prosecution. In the first place, the fine in the case of these assessees can, if necessary, be made as heavy as the tax imposed, namely Rs.9300/- and odd, because, the income returned by the firm was only Rs.907/- (from business) whereas the income on which they were actually taxed was Rs.50,000/- and they would have, therefore, avoided nearly the whole tax if the income returned by them had been accepted as correct. It is true that Rs.50,000/- is only an estimate and not the actual income, and, from a recent judgment of the Rangoon High Court, it would appear that it is open to an assessee in the course of proceedings under section 28 to let in evidence to show that his actual income was less than that estimated by the Income-tax Officer under section 23. Such evidence will not of course affect the

(K)

assessment

assessment already made but would be relevant for ascertaining the maximum fine that can legally be imposed under section 28. In the present case, however, it is expected that the actual income of the assessee will not fall far short of the Income-tax Officer's estimate and that it will therefore be possible to impose a fine of about Rs.9,000/-. A heavy assessment such as this, coupled with an equally heavy fine amounting to thousands of rupees, cannot but have a salutary effect, not only on this assessee, but also on other assessees, especially businessmen, it has been stated, are the chief offenders in this respect. Prosecutions under the Act are intended more to instil fear into the minds of dishonest assessees than to serve as a moral punishment to individual offenders. In a case like this, where the assessee can be made to pay a huge sum by way of penalty, action under section 28 would seem to achieve the same object as a prosecution under section 52. It has also the added advantage of the Government being able to pocket a fat sum by way of fine, without at the same time having to undergo the trouble and expense which are inevitable in the case of a prosecution. Again, prosecution is a weapon to be used only in extreme

Please See page 8 of I.T.O.'s note at (J)

of S.N.4 of Cal'n (L)

extreme cases and should not ordinarily be resorted to until all other remedies available under the Act have been exhausted. In this connection, it should be remembered that this is not the first or the only occasion when these assessees have filed a false return. They have been systematically filing such returns year after year and the Department has been systematically ignoring them and estimating the income. The result has unfortunately been that the return has come to be regarded as a mere farce both by the assessees as well as by the Department and the assessees do not consequently worry in the least as to what figures they enter in it. It is observed from the records received from the Income-tax Officer that this firm has been assessed continuously for the last 6 years, from 1926-27 to 1931-32, on an estimated income of about Rs.20,000/-. The Department presumably knew that the returns were false and that the assessees were purposely withholding their correct accounts in order to evade proper ~~accounts~~ assessment. They did not, however, bring home to the assessees the danger involved in filing false returns. The proper procedure in such cases would have been for the Income-tax Officer to raise the assessment every year or to impose a fine under section 28 until the assessees realised that it was cheaper for them to

× Page 1 of I.T.O's Note at (D).

be

assessed on their real income than on an estimated figure. In the case of these assessees, the Income-tax Officer was practically repeating the same figure, which admittedly was below the actual income, and they naturally found it more advantageous to submit to an arbitrary assessment based on ~~certain fixed~~ percentages of the total turnover shown by them ~~specified by the assessees~~. Taking advantage of the procedure adopted by the Department, the assessees have been concealing particulars of their income and showing as small a turnover as possible. It is evident that they did not return an income of Rs.900/- and odd during this year in the hope that they would be assessed on that amount. They evidently thought that the assessment would as usual be made on a percentage basis. It would appear from the particulars furnished by the firm with their return that they were prepared to be assessed this year on an income of about Rs.13,420/-. In any case, they did not expect to be assessed at a figure higher than the previous years' assessments which, as stated already, were always in the neighbourhood of Rs.20,000/-. But the assessees were baffled in their expectations as the administration of the Act had been tightened up this year and the Department was not in a mood to allow the assessees to continue to play the old game. They knew

that

that the return and the accounts produced were false and that the assessees had concealed particulars of their income, but had no definite proof to that effect at the time. They therefore did not penalise the assessees under section 28, but assessed them on a figure which is nearly three times as that adopted in the previous year. Such an assessment by itself should ordinarily be regarded as a sufficient punishment even for the most recalcitrant assessee. If, in addition, he is made to pay an equally big sum by way of penal assessment, we can practically be sure of his filing a proper return in future years. In fact, even during this year, the Collector seems to have at first held the view that the imposition of a penalty was unnecessary in view of the assessment made. It is true that definite information that the books produced by the firm were false was not before him at the time, but, even if it were, it would appear from paragraph 4 of his letter to the Commissioner, that he would have at the most imposed only a penalty and would not have recommended a prosecution.

Now that the assessees have withdrawn their appeal and in view of the circumstances set forth above, it is for consideration whether the imposition of

× Rs. 18,000/- odd.

× Page 11 of the note at (D).

(E)

(24)

offered for withdrawal

a

a severe penalty, with a warning that they would be prosecuted on the next occasion they file a false return, would not meet the requirements of the case. If the Commissioner agrees in this view, the Collector may be asked u.o. whether he approves of the action proposed and, if so, to indicate the amount of the penalty which, in the light of these notes, should, in his opinion, be imposed. A formal notice may then be issued to the assessees to show cause why a penalty under section 28 should not be imposed. They are entitled to be heard on this point and to produce evidence to prove their actual income for the purposes of determining the maximum fine that can be imposed under section 28. The enquiry under section 28 can be conducted either by the Commissioner himself or by the Income-tax Officer under his orders.

If, on the other hand, the Commissioner considers that the assessees should be prosecuted, the file may, if approved, be sent u.o. to the Government Pleader and his views obtained.

(From para 14).

7-3-33.

Commissioner

U.O.No. 2343
Dated 16 March 1933. The Collector, Civil & Military Station, Bangalore, u/o.

26

Jagree that action under Sec 98
will be preferred for criminal
prosecution

I think that Rs 3000/- or 1/3rd of the sum
will be an adequate penalty.

18.8.83

27

(31)

(A)

(B)

(H)

The assessee was assessed by the Collector as Income Tax officer. The appeal which is before me in my capacity as Ass Commr is sought to be withdrawn.

I am competent to allow the withdrawal but this will not affect proceedings under section 28.

The only point is who should take proceedings under sec: 28?

The clerk says I should because no proceedings are pending before the Income Tax officer. The clerk relies on the wording " in the course of any proceedings".

I am averse to such procedure ,if it can be avoided, as it leaves the assessee without any appeal against the order under sec: 28.

The discovery of the inaccurate particulars of income was made by the Income Tax officer in the course of his proceedings but definite proof of the inaccuracies was only forthcoming after the passing of the assesment order and also after the filing of the appeal.

On page 808 of Sundaram's Law of Income Tax under the commentary on "in the course of any proceedings"

it is not necessary that the discovery.....

should be made before the assessment or decision on the appeal.But the commentary also refers to the discovery by the Income Tax officer or the Asst Commr.It seems to imply therefore that whoever makes the discovery whether before or after assessment or before or after the decision on appeal should institute proceedings under sec: 28.

In my view therefore the Income Tax officer should conduct proceedings under sec: 28 as the assessee will thereby be given a chance to appeal.

There are also definite provisions in sec: 32 for an appeal against the order of an Asst Commr acting under sec: 28 and if I deal with the case as Asst Commr/who will hear the appeal?

Commr of Income Tax should be asked D.C. for is advice.

D.O.No. 3005

THE MYSORE RESIDENCY,
Bangalore, 30th April, 1933.

(33)

We are considering the question of instituting proceedings under section 28 against an assessee for furnishing inaccurate particulars of his income, and I should be glad to have your advice on a point of procedure.

2. Until recently, the assessment powers of the Income-tax Officer of the Station were limited to incomes not exceeding Rs.20,000/-. Assessments of incomes exceeding Rs.20,000/- were made by the Collector and Assistant Commissioner of Income-tax, in his capacity as Income-tax Officer, and appeals in such cases were heard by me, as Assistant Commissioner.

3. In the case under consideration, the assessee was assessed by the Collector as Income-tax Officer. Against this assessment, he filed an appeal before me in my capacity as Assistant Commissioner. While this appeal and the question of instituting proceedings under section 28 were under consideration the assessee put in an application for the withdrawal of the appeal on the ground that he wanted to file a Review petition under section 33.

4. I am of course competent to allow the withdrawal of the appeal and am of opinion that this will not vitiate proceedings under section 28, but the point is, who should take proceedings under section 28 ? It may be argued that "in the course of any proceedings" occurring in section 28 would indicate that I should because no proceedings are pending before the Income-tax Officer. I am, however, averse to such procedure, if it can be avoided, as it leaves the assessee without any appeal against an order under section 28.

5.

6. The discovery of the inaccurate particulars of income was made by the Income-tax Officer in the course of the assessment proceedings, but definite proof of the inaccuracies was forthcoming only after the passing of the assessment order and also after the filing of the appeal. On page 808 of Sundaram' Law of Income-tax, under the commentary on "In the course of any proceedings", it is stated that it is not necessary that the discovery should be made before the assessment or decision on the appeal. The commentary also refers to the discovery by the Income-tax Officer or the Assistant Commissioner. It seems to imply therefore that whoever makes the discovery whether before or after the assessment or before or after the decision on appeal should institute proceedings under section 28. There are also definite provisions in section 32 for an appeal to the Commissioner against the order of an Assistant Commissioner acting under section 28, but if I deal with the case as Assistant Commissioner, the assessee will be deprived of his statutory right of appeal, as I cannot obviously decide an appeal against my own order. In my view therefore the Income-tax Officer should conduct the proceedings under section 28 as the assessee will thereby be given a chance to appeal. As I am in some doubt as to the competence of the Income-tax Officer to initiate proceedings under section 28 at this stage, I should be very grateful for your advice on the matter.

O/C

F. H. Senneck, Esq., I.C.S.,
Commissioner of Income-tax,
Madras.

BJ

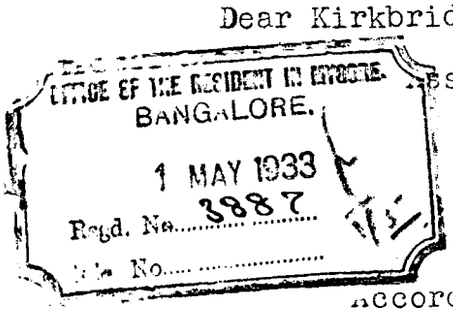
19.4.33

D. O. No. 307/33.

Office of the
Commissioner of Income-tax,

Madras, dated the 28th April 1933.

Dear Kirkbride,



Assessment - Incometax - Penalty under section 28 - Levy of, during the pendency of appeal proceedings by Assistant Commissioner of Incometax - Permission for withdrawal of appeal - Effect of - If granted - Your D.C.C.No.3005/33 dated 20th April 1933.

According to the instructions on page 213 of the Income-tax Manual (5th Edition) a penalty under section 28 is leviable only in the course of any proceedings under the Act. Unless therefore any such proceedings are pending before the Officer who proposes to levy the penalty one of the conditions requisite for the imposition of the penalty will not exist. In the case now before you there do not appear to be any proceedings pending before the Incometax Officer. He cannot therefore initiate action under section 28. It is thus necessary that action to impose the penalty should be taken by you in your capacity as Assistant Commissioner before whom an appeal is pending. I do not think that you need be deterred from imposing a penalty in a fit case, merely because the right of appeal against such imposition lies to you in your capacity as Commissioner. Senneck's last act before he proceeded on leave last month was to levy a sustantial penalty in the course of certain proceedings which came up before him under sections 66 and 33 of the Act. With reference to ~~the~~ para 5 of your letter it does not appear to me to be necessary that the Officer who discovers the concealment should impose the penalty. All that the section requires is that the officer who imposes the penalty should be satisfied that there has been a concealment. The word "discovery" is not used in section 28 at all. I must confess that I cannot understand Sundaram's commentary on "In the course of ~~my~~ any proceedings". It seems to me to be quite obvious from the language used in section 28 that unless the income concealed is assessed and the assessee thus does not avoid tax on such income, no question of penalty can arise at all. It follows therefore that

the "discovery" of the concealed income must be made in the course of proceedings under sections 23,30, 32 or 33.

Yours sincerely,

29.4.50.

Capt. G.Kirkbride, I.A.,
Commissioner of Incometax,
Civil & Military Station,
Bangalore.

35

Please see from paragraph 31. If approved, a notice may now issue to the appellants directing them to show cause in writing why they should not be proceeded against under section 28. On receipt of their written representations, a date for the appearance of the counsel can be fixed.

Draft submitted for approval.

Mayan
26.6.33

Comm^r

27/6

S.N.9 DD

Issued: No.4922 dated the 3rd July 1933.

S.N.10

Letter dated the 15th July 1933, from Mr.J.L. D'Silva, Advocate, Bangalore.

36

Please see para 3 of S.N.9 and p.u.c. DD

If approved, time may be granted till Monday th 7th August 1933.

Draft submitted for approval.

Mayan
19.7.33

Comm^r

20/7

S.N.11

Issued: No.5323 dated the 22nd July 1933-

S.N.12

Ptr

Representation dated the 5th August 1933, from Messrs. D.Syed Dosman & Co.

DD

S.N.12 of P/P.

Please see S.N.9 and ~~P.U.C.~~ The offence for which the assessees in this case are sought to be penalised under section 28 of the Income-tax Act is that they deliberately furnished inaccurate particulars of their income and thereby returned it below its real amount. The actual charges are, first, that they omitted to show the income from some of their branches in the Civil and Military Station and, secondly, that the particulars of sales etc. furnished by them, particularly of shops Nos.40 and 44, were inaccurate. The real books of account were suppressed and false books produced in support of the incorrect figures furnished.

Branches of IW assessee firm.

As regards the first part of the charge, the facts are that when the assessment proceedings were in progress, the Income-tax Officer came to know of a deposition made by Mr.D.Syed Hasham, the proprietor of the assessee firm, in the District Court, in which he had said that the firm had five branches in the Cantonment. The assessees' return of income however referred only to two branches. Local enquiries made also showed that the firm had five branches in the Station until

December

December 1931, (when one was disposed of), and four thereafter. This exactly fitted in with the information contained in the deposition, which was made in September 1931. The four shops, which continued to be branches of the assessee firm until the end of the year of account (31st March 1932), were:-

H/H

vide Statement Below (H/H)

(i) D.Syed Osman & Co., Branch No.40 (40, New Market Square),

(ii) D.Syed Osman & Co., Branch No.44 (44, New Market Square),

(iii) D.S.O.Abbas & Co. (39, New Market Square) &

(iv) D.S.Osman & Co. (43A, New Market Square).

The first two (Branches 40 & 44) were included in the return, but the last two were omitted from it. The I.T.O. issued a notice to the assessees under section 22(4) for the production of the accounts of the two branches omitted from the return, but the assessees do not appear to have replied to it. In a deposition made before the District Judge on 13-10-1932, the Managing Partner of the firm, V.O.Abdul Rahimon, refers to three branches.

Para 2 of S.N.7 (E)

= Page 2 of (E/2)

In their appeal petition at S.N.1, the assessees stated that the other three branches referred to by the Income-tax Officer in his order of assessment belonged to the members of D.Syed Osman's family and had nothing to do with the appellant firm. In para 10 of their

= (A) = (F)

Last para of page 3

× (H)

S.N.12 of (P/P).

present representation, it is stated as follows:-

> "The petitioners are not aware as to how the Income-tax Officer states that they have not disclosed the accounts of their other branches. They have no further branches than those mentioned here*. It is quite possible that he has taken into consideration a branch which belongs to D.Syed Hasham, the capitalist of the petitioners' firm and not to these petitioners".

*Branches Nos. 40 & 44.

The assessees' case therefore is that they have not failed to disclose the income of any of the branches which actually belong to them. In other words, they say that shops Nos. 39 and 43A, New Market Square and another shop, which was closed in December 1931, are not their branches, but are independent concerns belonging to the members of D.Syed Oosman's family. But then, how did the proprietor say that they had five branches in Cantonment in September 1931? The assessees might perhaps attempt to explain this by saying that the Proprietor had by mistake described the shops which belonged to him (or other members of his family) as branches of the firm of D.Syed Oosman & Co., of which he was the principal partner. But the Managing Partner of the firm has himself admitted, so recently as 13-10-1932, that there were three branches in Catonment. The assessees cannot possibly suggest that the Managing Partner also made a mistake: according to the appeal petition, he had no connection of any sort with the shops belonging

D.Syed Hashim

(H/H)

(E/2) 40 44 939 & 143a

* S.N.1 ante (A)

the Proprietor or other members of his family exclusively. How then can the assessee reconcile his present statement with that of the Managing Partner in the District Court?

(40) There appear to be sufficient materials on record to presume that shops Nos. 39 and 42A are branches of the assessee firm and it is for the assessee to prove that they are not so. After all, all the shops belong either to D.Syed Hasham and other members of his family or to D.Syed Oosman & Co., of which D.Syed Hasham is practically the sole owner. In the circumstances, he should have no difficulty in proving the ownership of the various firms concerned.

(41) As regards the second part of the charge, it is submitted that there is absolutely no doubt whatever that the figures and books furnished by the assessees were false. The Assistant Commissioner states that there was ample internal evidence in the books themselves to show that they were specially prepared for income-tax purposes. Over and above this, the real books of one of the shops concerned (No.44) were subsequently discovered. They were produced in the District Court by the firm in connection with a suit instituted by them against one of their partners who was in charge of

(x) S.N.7.(E) — portion marked 'A'.

Branch No.44. The assessees had denied credit sales in the branches and had shown a note book, as the only account kept for the Branch, showing sales for the whole year 1931-32. But it was found that (1) a Daily Sales Book for cash sales, (2) a Day Book for credit sales, (3)Ledgers for credit transactions and (4) a "Kurippu" Book containing all the daily transactions of the shop, purchases and sales, cash as well as credit, were actually maintained. The assessees now admit that the figures furnished in respect of sales of Branches Nos.40 and 44 were not correct. Their explanation is as follows:-

> "The usual mode of business is that at the end of each day, each of the shops Nos.44 and 40 send their sales account which are entered in the Head Office books. All these years the Head Office has been submitting a return from the accounts entered in the Head Office books and accordingly for the year 1931-32 they submitted a return according to their Head Office books and showed a profit of Rs.907-6-4. .....
>
> "It was later however discovered that the books maintained at No.40 and 44 shops showed actually more sales than those disclosed by them to the Head Office and which had been entered in the Head Office accounts In submitting therefore the return for the year 1931-32 the assessees had not been actuated by any motive to deceive the Government and the return made by them is absolutely true according to the books maintained by the Head Office. The assessees were however deceived by their branches.....".

This can hardly be believed. It is ridiculous to suggest that the Head Office had no idea of the sales in the branches and were 'deceived' by them. They now admit sales in the two branches to the extent of Rs.1,63,000/-, whereas, according to the figures furnished to the I.T.O., the sales were only

Page 3 of (D)

Rs.48,000/-. The books produced - some of them at any rate - were false and the assessees evidently knew that they were false. They told the I.T.O. that a note book showing cash sales was the only book maintained in the branches. This note book was specially written up for income-tax purposes and the actual books were concealed. The Managing Partner knew the existence of these books vide his statement in the District Court. That the assessees deliberately furnished inaccurate particulars of their income with a view to show it below its real amount and produced false books in support of their return appears to be clearly established and the assessees are therefore liable to be fined under section 28.

Para 3 of (E)

(E/2)

(4)

Sec. 28.

Next, as regards the amount of the fine. The maximum that can be imposed by way of penalty is a sum "not exceeding the amount of income-tax which would have been avoided if the income returned by the assessees had been accepted as the correct income". The point at issue therefore is what is the amount of tax sought to be avoided. The income actually returned was Rs.907-6-4 from business and Rs.399/- from property. If this had been accepted as correct, the tax payable would have been only Rs.13-10-0. The tax actually assessed was Rs.9398-3-0. The difference is Rs.9384-9-0. But having regard to all the circumstances of the case, it is submitted that the assessees cannot be

(R)

(B)

for Consideration whether the assessees can be

regarded as having tried to avoid tax to this extent. It is evident that they did not return an income of Rs.907-6-4 from business and Rs.399/- from property in the hope that they would be assessed on the income so returned. They thought that the assessment would as usual be made on a percentage basis. It would appear from the particulars furnished by them with their return that they were prepared to be assessed on an income of Rs.13,420/-. And the Department knew this. A reference is in this connection invited to para 5 of the I.T.O.'s note to the Assistant Commissioner, para 10 of the appeal petition and para 5 of their present representation. The income on which the firm would have been assessed, if the particulars of sales etc. furnished by them to the I.T.O. had been accepted as correct, may therefore be taken as Rs.13,420/-. Next, as regards the tax actually levied. The I.T.O. has assessed the petitioners on an ~~estimated~~ income of Rs.50,000/- from business and Rs.399/- from property. But, Rs.50,000/- is only an estimate. The I.T.O. states that he has definite and reliable information that the assessee's real books showed a profit of Rs.47,800-11-5 for the year of account, but the source of his information has not been disclosed. It is important to note that it is open to an assessee, in the course of proceedings

under

under section 28, to let in evidence purporting to disclose his real income. Such evidence is relevant and admissible, not for the purpose of varying or affecting the assessment already made, but in order to show either that no penalty ought to be imposed or that the amount of the penalty ought to be less than the maximum prescribed under the Act. Please see in this connection the judgment of the Rangoon High Court, dated 10-1-1933, in Commissioner of Income-tax, Burma vs. A.A.R.Concern, Maubin.

(K)

(43)

In para 7 of their representation, the assessees state as follows:-

> "The assessees beg to submit that the said assessment of Rs.50,000/- is very heavy and out of all proportion to the income of the petitioners considering the very great depressed times and the small nature of their business. The gross sales as now disclosed by the branch books for the period of 1931-32 amount to Rs.5,25,716-5-11 as per statement filed herein, being the Head Office sales and two third sales of the branches and if the usual mode of theirs on the turn over basis is made even at 5% it comes to only Rs.26285 gross income and Rs.15245/- as net income which is no where near the region of Rs.50,000/-".

If the income now returned is accepted as correct, the tax avoided comes to Rs.549/11/0 only. Even if the <u>net</u> profits are calculated at the usual perdentage of 4% on oilmanstores, 1% on flour and sugar and ¾% on supplies to City shop, the income works out to Rs.15,839/- only . The tax avoided in this case will be Rs.611-9-0. Shops Nos. 40 and 44, which the assessees have admitted in their return to belong to them and the income from which have all along been taken

into account in assessing the profits of the firm, are now, for the first time, stated to be not branches but only partnership concerns in which the assessees have only a two-thirds share. In the sales account now filed, the assessees have accordingly taken into account only two-thirds of the sales in the branches. Even if the alleged partnership is not proved and it is held that all the sales of the branches should be taken into account, the total income from business will come to only Rs.18,016/- and the tax avoided will be Rs.838/6/0.

The maximum amount of tax avoided according to the above calculations is therefore only Rs.838-6-0. The I.T.O. has, however, according to the information available, assessed the petitioners on an income of Rs.50,000/- from business, and if the actual income of the assessees is taken to be some where near this amount, the tax avoided would be about Rs.8,318-5-0. We have therefore to consider whether the sales now shown can be accepted as correct. This, it is submitted, can be decided only after a thorough examination of such evidence as the assessees are now prepared to adduce in support of the figures now furnished. The necessary enquiry can be conducted by the I.T.O. under the Commissioner's orders. It may be mentioned that if

the

the assessees agree to their being fined an amount, which the Commissioner considers reasonable in the circumstances of the case, there is no need to conduct an enquiry into the actual amount of tax avoided. The Assistant Commissioner considers that Rs.3,000/- would not be an unreasonable penalty. If the assessees do not agree to this amount, or such other sum as may be fixed by the Commissioner, the Income-tax Officer will have to be asked to conduct the necessary enquiry.

Para 26 ante

The assessees are entitled to be heard before orders are passed under section 28. A date for the purpose may therefore kindly be fixed.

Sec. 28(3). 4.5

M.Naya
18-10-33

(From para 37)

Commissioner.

4.5

2nd.

Id/-G.K.
18-10

Draft notice is submitted, with fair, for signature

4.1

M.Naya
19-10-33

(Only paras 45-47 for the present)

Comm:

S.N.13

P/PD

Issued No.9986, dated the 20th October 1933.

As verbally instructed, a draft order is submitted for consideration.

The reduction of the assessable income by Rs.15,000/- results in a reduction of the tax from Rs.9,398-3-0 to Rs.5,617/- i.e., by Rs.3,781/3/-.

The assessment is now being made on an income of Rs.35,000/- from business and Rs.399/- from property. If the income returned is taken to be Rs.13,⊗420/- from business plus Rs.399/- from property, the tax avoided would work ~~up to~~ out at Rs.4,538/-. A penalty not exceeding this amount can legally be imposed under section 28.

⊗This is the figure on which they would have been assessed if the usual mode of percentage assessment had been adopted this year.

The amount of the penalty that the Commissioner considers should be imposed in the circumstances of the case may kindly be ~~fixed~~ fixed & entered in the draft.

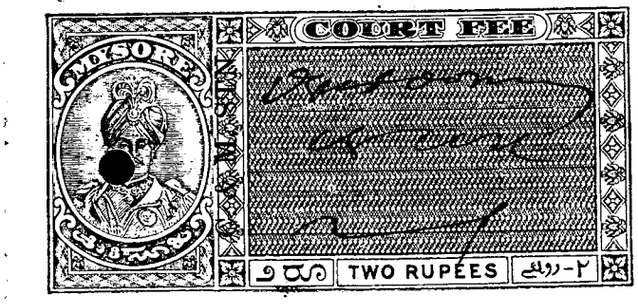
5-2-34

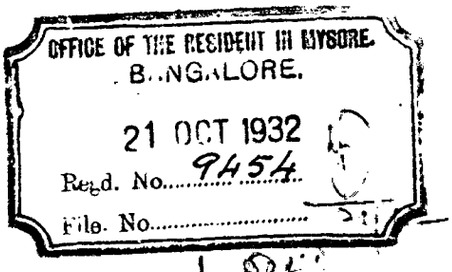
(Para 55 a)

COMMISSIONER.

Issue

Issued No. 1335 D - 16.2.34





To

The Commissioner of Income-Tax,
C. & M. Station, Bangalore.

The Twentieth day of October 1932.

The petition of D. Syed Oosman & Co., of C. & M. Station, Bangalore, showeth as follows.:--

I. Under the Indian Income - Tax Act, 1922, your petitioner has been assessed on the sum of ~~Rs~~ 50,339/- for the year commencing ~~XX~~ the Ist day of April 1931. The notice of demand attached hereto was served ~~XX~~ upon him on 27-9-32

2. Your Petitioner's income accruing and - arising or received for the year ending 31st day of March 1932 amounted to ~~Rs~~ 1,306-6-4 after deducting ~~Rs~~ 11,040-0-0. as expenses.

907-6-4 Business
399-0-0 Profits
1306-6-4 Total

3. Such income and profits actually accrued or arose or were received during the period of twelve months.

4. During the said year your petitioner had no other income or profits.

5. Your petitioner ~~XXXX~~ has made a return of his income to the Income - Tax Officer under -- Section (2) of the Act and has complied with all the terms of the notice served on him by the Income Tax Officer under Sec. 23 (2) and

and (or Sec. 22 (4))

Your petitioner therefore prays that he may be assessed accordingly and further prays that pending disposal of this Appeal, a stay - order may be kindly issued not to recover the tax from him.

Partner of Petitioner firm.
(Sd) V.O. Abdul Rahiman

Grounds of Appeal.

I. The learned Collector and Income Tax Officer erred in arbitrarily fixing the taxable -- income of the Petitioner at ~~Rs~~ 50,339/-.

2. The petitioner has been for the last eight years assessed on the basis of the turn over in his business and the learned Collector and Income Tax Officer could and ought to have adopted the same basis for assessment.

3. From the system of accounting adopted by the Assessees (Petitioner) namely Cash basis System permissible under the law, the learned Collector and Income Tax Officer ought ~~to~~ to have calculated, as he himself did hitherto on the total turn over of the business from the records kept of actual receipts and actual payments in the sales books of the petitioner.

4. The learned Income Tax Officer ought to have noticed,

(a) that, from the nature of the business carried on by the assessee and the system of accounting

accounting adopted by him uniformly hitherto, it is neither possible nor necessary to keep regular stock books and that stock taking or stock books become necessary only when the Mercantile system of Accounting is adopted;

(b) that purchases need not find a — place in Day Books as they can be posted straight to Ledgers;

(c) that several Income Tax Officers and a large number of Accountants and clerks have seen the accounts of the assessee for the last several years and that the present Income Tax Officer himself has passed ordersaccepting the accounts — during the last 3 years; and,

(d) that in any event, the assessees were entitled to be given an opportunity to -- prove their case by production of whatever other documents or details required by ~~him~~ the taxing Officer.

5. The Learned Income Tax Officer erred,

(a) in not giving sufficient time to the Petitioner to produce certain elaborate details called for by his Office;

(b) in not noticing that the other three branches referred to in his order of assessment belong to the Members of D. Syed Ooman family and have nothing to do with the --- Appellant;

(c)

(c) in referring to certain alleged judicial proceedings particulars of which the assessee has no knowledge and with reference to which the assessee has not been questioned ;

and

(d) in not disclosing in his order "the best information available" and questioning the assessee about the same.

6. The Petitioner is even now prepared to have his whole accounts independently audited by the Department to find out correctly the total actual cash sales and assessed on the actual profits.

7. The present assessment made by the Income Tax Officer on a mere guess and without evidence is against Law and liable to be set aside.

8. The Income Tax Officer also erred in law in not issuing a notice to the assessee stating the particulars and grounds of objections to the return submitted by the assessee in case he considered the same to be incomplete or not genuine.

9. The procedure of the Income Tax Officer ought according to law, to have been governed by judicial considerations and not on hearsay evidence which is no legal basis for proper assessment.

10. The usage, practice and precedent, entitle

at the most and at the worst entitle the assessee to be assessed on the following fixed per centage on the total turn over of his business.:--

4 % nett on oilman stores on Rs 2,94,567-3-I	.. Rs	II,782- 8- 0.
I % nett on sales of flour and sugar. Rs I,43,74I-II-0.	.. Rs	I,437- 6- 6.
½ % on commission on supplies made to the City shops. Rs 26,920-I2-I.	.. Rs	200- I-I0.
Total.	Rs	I3,420- 0- 4.

Partner of Petitioner Company. (V. o. Abdur Rahiman).

Advocate for Petitioner.

Verification.

I, V.O. Abdul Rahimon, Partner of the Petitioner Company named in the above petition, do declare that what is stated therein is true to the best of my information and belief.

Partner of Petitioner Company. (V. o. Abdur Rahiman)

Bangalore,

Dated 20th Oct. 32.

F/753/32-33. Assessment U/S 23(3).

Notice of demand under section 29 of the Indian Income-tax Act, 1922.

To

Messrs Syed Osman & Co.,
Russell Market, P. O. Station, Bangalore.

1. You have been assessed for the year 1932-33 to Income-tax, surcharge amounting to Rs. 8193-3-0 ~~(in addition to which a penalty of Rs. has been imposed)~~, as shown in the copy of the assessment form overleaf.

2. You have also been assessed to super-tax amounting to Rs. 1205/2.

3. You are required to pay the amount of Rs. 9398-3-0 ~~on~~ or before the 25th October 32 to the ~~Treasury Officer~~ / ~~Sub-Treasury Officer~~ / Agent, Imperial Bank of India, at P. O. Station, Bangalore, ~~when you~~ will be granted a receipt.

4. If you do not pay the tax on or before the date specified above, you will be liable to a penalty which may be as great as the tax due from you.

5. If you are dissatisfied with your assessment you may present an appeal under sub-section (1) of section 30 of the Indian Income-tax Act, 1922, to the Assistant Commissioner of Income-tax at P. O. Station, Bangalore, within 30 days from the receipt of this notice, on a petition duly stamped in the form prescribed under sub-section (3) of section 30 and verified as laid down in that form.

~~Or~~

~~The assessment has been made under sub-section (4) of section 23 of the Indian Income-tax Act, 1922, because you failed~~ / ~~to make a return of your income under section 22~~ / ~~to comply with a notice under sub-section (4) of section 22~~ / ~~to comply with a notice under sub-section (2) of section 23~~ ~~and no appeal lies. But if you were prevented by sufficient cause from making the return or did not receive the notice(s) aforesaid, or had not a reasonable opportunity to comply, or were prevented by sufficient cause from complying with the terms of the notice(s), you may apply to me, within one month from the receipt of this notice, under section 27, to cancel the assessment and proceed to make a fresh assessment.~~

6. The appropriate chalan should be sent along with the amount paid. Should you lose the chalans attached to this notice of demand, it will be necessary for you to apply to the Income-tax Officer for copies of fresh chalans.

7. If you remit the demand by money order, you should send it to the treasury officer, , and should state on the money order form that the payment is on account of ~~income-tax~~.

Dated 24/9/ 1932.

Income-tax Officer.

(Place) P. O. Station, Bangalore 24/9

I. T. 15.

NOTE.—The superfluous words in paragraph 5 should be deleted.

ASSESSMENT FORM.

Assessment for 1932-33.

DISTRICT OR AREA S. & M. Circle, Bangalore.

Name of assessee Messrs. Syed Osman & Co.

Address Russell Market, Bangalore

Serial number.	Detailed sources of income.	Amount of income.	Tax deducted at source.	Remarks.
		Rs.	Rs. A.	
1	Salary (including employee's provident fund contributions). ...			
1A	Annual accretion (less employee's provident fund contributions) under section 58A (f).			
2	Interest on Securities			
3	Property	339		
4	Business	50000		
5	Profession			
6	Other sources			

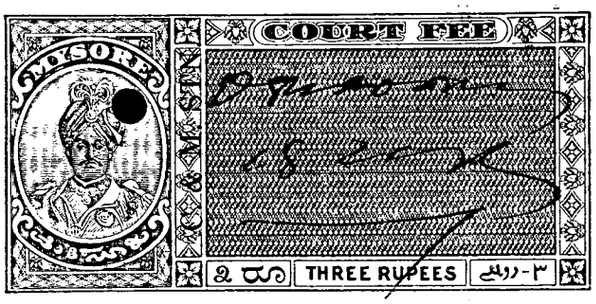
		Rs.	A.
(i)	Total income	50339	—
(ii)	Deduction under section 7 (i) or on account of provident fund, to which the Provident Fund Act, 1897, applies.		
(iii)	Deduction on account of recognised provident fund—		
	(a) Contributions		
	(b) Exempted interest		
(iv)	Deduction on account of insurance premia		
(v)	Deduct sums received as dividends or from a firm the profits of which have been assessed to income-tax ...		
(vi)	Deduct amount of interest from tax-free securities of the Government of India or of a local Government ...		
		50339	—
(vii)	Income now to be subjected to income-tax		
(viii)	Rate applicable 31¼ pies per rupee	8193	3
(ix)	Amount of income-tax		
(x)	Reduction under section 17		
(xi)	Amount of deductions at source from salary or interest on securities for which credit is given under section 18 (3)		
(xii)	Abatement on account of dividends at pies per rupee)		
(xiii)	Abatement on account of income from a registered firm (at pies per rupee)		
		8193	3
(xiv)	Net amount of income-tax (or ~~refund~~)	1171	14
(xv)	Amount of super-tax on Rs 20 000/- @ 11¼ pies in the Re:	33	2
xvi)	~~Penalty under section 28 [or section 28 2]~~ Super tax on 339/- @ 18¾ pies		
(xvii)	Total sum payable (or ~~to be refunded~~) in figures as well as in words.	9398	3

Rupees Nine thousand three hundred and ~~annas~~ Ninety eight + annas three only

Dated 24/9/1932

Income-tax Officer.

DC 9P—722IT—(G-1013)—19-1-32—4,00,000



In the Court of the Commissioner of Income Tax Civil and Military Station Bangalore

No. OF 1932 ~~19~~

Appellant, ~~*Plaintiff.*~~ *Respondent,* ~~*Defendant.*~~

Messrs. D. Syed Osman and Co 6th Station Bangalore	Vs.	

1. I ...the... Appellant ...above named do by these presents retain **Mr. L. S. RAJU, M.A., (*Hons.*) B.L., Advocate, Lakshmi Sthanam, Kasivisveswara Temple Lane, Bangalore City,** and.....

.....

to appear in and conduct the above case on ...my... behalf to judgment.

2. ...I...further empower him to execute any decree or order that may be passed in ...my...behalf and to receive from Court such sums of money as ...I... may be entitled to get and to grant receipts therefor.

3. ...I...also undertake to confirm and ratify all the legal acts done by the said Advocate in so doing.

Accepted

Advocate for Appellant

Signed before me and personally known to me.

17/1/32 *Advocate.*

Caxton Press, Bangalore City—1931

BEFORE THE COMMISSIONER OF INCOME-TAX

C. & M. Station, Bangalore.

Income-Tax Appeal Petition

No. of 1932.

Appellants - Petitioners:—

D. Syed Oosman & Co.,
New Market Square,
C. &M. Station, Bangalore.

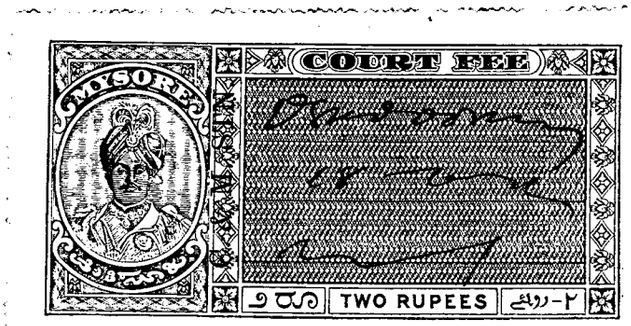
(Files Memorandum of Appeal.)

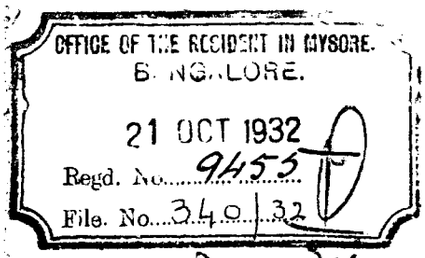
L.S. Raju, M.A., Hons., B.L.

Advocate for Appellants
(Petitioners)

Bangalore,

Dated 20th Oct. 32.





BEFORE THE COMMISSIONER OF INCOME - TAX,

C. & M. Station, Bangalore.

Income Tax Appeal Petition

No. of 1932.

Appellants.:- Petitioners:—

D. Syed Oosman & Co.,
New Market Square,
C. & M. Station, Bangalore.

For reasons sworn to in the accompanying affidavit, the Appellants - Petitioners in the above case respectfully — pray that this Hon'ble Court may be pleased to kindly direct that the recovery of the assessment now made by the ~~IX~~ Collector and Income Tax Officer, and forming ~~xx~~ the subject matter of the above appeal be stayed - pending the final disposal of the above — appeal.

Advocate for Appellants.
(Petitioners)

Bangalore,

Dated 20th Oct. 32.

(S.d) V.O. Abdul Rahiman.

Partner of Petitioner firm.

BEFORE THE COMMISSIONER OF INCOME - TAX,

C. & M. Station, Bangalore.

Income - Tax Appeal No.
of I 9 3 2.

Appellants. :- (Petitioners)

D. Syed Oosman & Co.,
New Market Square,
C. & M. Station, Bangalore.

Affidavit.

I, V.O. Abdul Rahiman, aged about 52 years, son of Chabu Mian Saheb, Partner in D. Syed Oosman & Co., New Market Square, C. & M. Station, Bangalore, do hereby solemnly affirm and state as follows.:—

I. I am the Managing Partner of the Assessee firm and am acquainted with the facts of the case.

2. The Collector and Income-Tax Officer, C. & M. Station, Bangalore, has assessed the income of the Petitioner firm for the year ending 3Ist March I932 at ~~Rs~~ 50,339/- and issued a demand notice claiming income tax of ~~Rs~~ 8,I93-3-0 and super tax of ~~Rs~~ I,205/- or in all ~~Rs~~ 9,398-3-0.

3. The said demand notice has been filed along

along with the Appeal presented to this Hon'ble Court this day.

4. From the grounds set forth in the Memorandum of the Appeal Petition presented byme this day on behalf of the Petitioner firm, it will be clear that the assessment made by the Collector and Income Tax Officer is against law, purely arbitrary and in any event, highly excessive and liable to be considerably reduced by this Hon'ble Court if not completely set aside.

5. The assessment made is very heavy, without any proper basis and out of all proportions to the income of the petitioner firm and contrary to the usage, practice and principles observed in the preceeding years regarding the assessment made in connection with the income of the Petitioner firm.

6. The Petitioner firm is always ready and willing to place all available and necessary information before this Hon'ble Court for the purpose of ascertaining its true income and pay the proper assessment legally due.

7. As the demand now made namely, Rs 9,398-3-0 is very heavy and excessive, it is necessary, and expedient and essential in the interest of justice that, pending the disposal of the Appeal petition, this Hon'ble Court should be pleased to direct that the recovery of the assessment now made by the Collector and Income Tax Officer and forming the subject matter

of

of the ~~xxx~~ said appeal be stayed; pending the final disposal of the appeal and I pray accordingly.

Partner of Petitioner firm. Sd/ V. O. Abdul Rehiman

I solemnly affirmed ~~Sworn to~~ before me, the contents having been translated and read over to deponent in Tamil & acknowledged by him to be correct

19/X/32 Head Clerk, Ct of Court City, Bangalore

Bangalore,

Dated 19th Oct. 32.

BEFORE THE COMMISSIONER OF INCOME-TAX,

C. & M. Station, Bangalore.

Income-Tax Appeal Petition

No. of 1956.

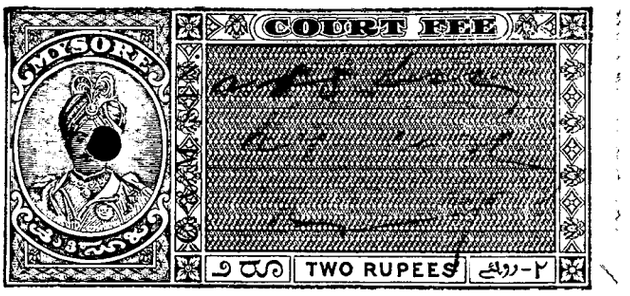
Appellants - Petitioners:—

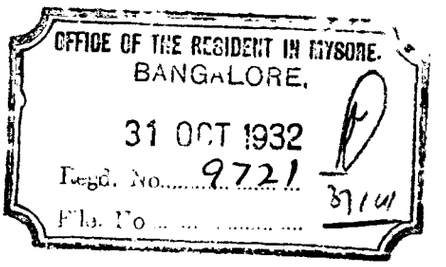
D. Syed Osman & Co.,
New Market Square,
C. & M. Station, Bangalore.

(Files Application and affidavit for staying the recovery of assessment.)

L.C. Raju, B.A., LL.B., B.L.
Advocate for Appellants
(Petitioners)

Bangalore,
Dated 20th Oct. 56.





BEFORE THE COMMISSIONER OF INCOME TAX,

C. & M. Station, Bangalore.

Income-tax Review Petition No. 4 of 32-33.

Petitioners.:—

D. Syed Oosman & Co.
New Market Square,
C. & M. Station, Bangalore.

Under Section 33 of the Indian Income-Tax Act, the Petitioners respectfully pray that this Hon'ble Court may be pleased to call for the records of the Collector and Income Tax Officer, C. & M. Station, Bangalore, in his File No. F. 753 of the Income Tax petition for the year 31-32, and revise and review his order dated 26th October 1932 declining to sanction postponement of the payment of tax due pending final disposal of the Appeal preferred by the Petitioners to this Hon'ble Court in Appeal Petition No. I of 1932-33 on the following among other grounds.:—

I. The assessment made by the Collector and Income Tax Officer is against Law.

2. The assessment made is very heavy — without

without any proper basis and out of all proportions to the income of the Petitioner firm and contrary to the usage, practice and principles observed in the preceeding years regarding the assessment made in connection with the income of the Petitioner firm.

3. The Petitioner firm is always ready and willing to place all available and necessary information before this Hon'ble Court for the purpose of ascertaining its true income and pay the proper assessment legally due.

4. As the demand now made namely, Rs 9,398-3-0 is very heavy and excessive, it is necessary, expedient and essential in the interest of justice that, pending the disposal of the Appeal petition, this Hon'ble Court should be pleased to direct that the recovery of the assessment now made by the Collector and Income Tax Officer and forming the subject matter of the said appeal be stayed, pending the final disposal of the appeal.

5. A copy of the Memorandum from the Assistant Commissioner of Income Tax, C. & M. Station, (No. F. 753/D. 26-10-32) is herewith produced.

6. The Petitioners respectfully pray that the order of the Collector and Income Tax Officer, C. & M. Station, Bangalore, refusing to postpone the payment of the assessment be revised. and further pray that recovery thereof in the

Partner of Petitioner firm.
(Sd) V.O. Abdul Rahiman

Advocate for
Petitioners.

Verification.

MEMORANDUM.

No.F/753.

From

The Assistant Commissioner
of Income-tax,

C. & M. Station, Bangalore,

Dated the 26th October 1932.

To

Messrs. D. Syed Oosman & Co,

Russell Market,

Bangalore.

Incometax assessment 1932-33 - Payment of tax - Your petition dated 24th October 1932 -

---

I see no grounds to sanction postponement of the tax due. Should the appeal result in a reduction of the demand a refund will be made at once.

Collector & Asst. Commr. of I. T.

Verification.

I, V.O. Abdul Rahiman Saheb, Partner of the Petitioner firm abovenamed do - hereby declare ~~that~~ that ~~the~~ the foregoing is true to the best of my knowledge, information and belief.

(S.d) V.O. Abdul Rahiman.

Partner of Petitioner firm.

Bangalore,
Dated 29.10.32.

BEFORE THE COMMISSIONER OF INCOME TAX

C. & M. Station, Bangalore.

Petition No. of 32-33.

Petitioners.:--

D. Syed Oosman & Co.
New Market Square,
C. & M. Station,
Bangalore.

(Petition under Sec. 33 of Income Tax Act.)

L.S. Raju, M.A.,Hons.,B.L.,
Advocate for Petitioners.

Bangalore,
Dated 29th Oct. 32.

D.C.No.F.753
Enc.1

Office of the Assistant Commissioner
of Income-tax,
C. &. M. Station, Bangalore,
31st October 1932.

My dear Kirkbride

4

Messrs. D. Syed Ocsman and Co., who have been assessed by me for the year 1932-33, applied to me for postponement of payment of the tax until the appeal preferred by him is disposed of. I did not agree - vide copy of my reply No.F.753 dated 26-10-1932 attached.

They have now sent another letter to me in which they state that "pending final orders to be passed by the Commissioner of Income-tax, regarding the appeal, as well as postponement of payment of the income-tax due", they may be permitted to pay at the rate of Rs.2,000/- per mensem.

I am not inclined to consider even this alternative request favourably as, in my opinion, the assessees are quite capable of paying the whole amount of the tax atonce and there is no reason why collection should be delayed. I however await your disposal of their request for postponement of payment until I write to them again.

Yours sincerely
Geoffrey Clarke
1/X/32

To
Captain G. Kirkbride, I.A.,
Secretary to the Resident &
Commissioner of Income-tax,
Civil & Military Station,
BANGALORE.

Memorandum No.F.753 dated 26-10-1932 from the Assistant Commissioner of Income-tax, C & M Station, Bangalore, to Messrs. D.Syed Oosman & Co., Russell Market, Bangalore.

Income-tax assessment 1932-33 - Payment of tax - Your petition dated 24-10-1932.

I see no grounds to sanction postponement of the tax due. Should the appeal result in a reduction of the demand a refund will be mad at once.

-----:0:-----

"TRUE COPY"

INCOME-TAX OEFICER.

1-11-32

5

№ 7749. 17th Nov. 32

From

The Commissioner of Income-tax,
C. & M. Station, Bangalore.

To

The Collector & Assistant Commr.
of Income-tax, C. & M. Station,
Bangalore.

S.N.1 (A)

Income-tax Appeal No.1/1932-33.-

Messrs.D. Syed Osman & Co., New Market Square, Bangalore, Appellants.

The records connected with the above assessment of the appellants may kindly be forwarded to this office at an early date.

COMMISSIONER OF INCOME-TAX.

26.11.32

6

IN THE OFFICE OF THE COMMISSIONER OF INCOME-TAX,
C & M. Station, Bangalore.

Dated the 15th November, 1932.

Income-tax Appeal No.1/32-33.

Messrs. D. Syed Osman & Co.,
New Market Square, C & M. Station,
Bangalore. .. Appellants.

---

x S.N.3

Petition dated the 29th October, 1932, praying that the order of the Collector and Income-tax Officer dated the 26th October, 1932, refusing to sanction postponement of the tax due until the appeal is disposed of, be revised.

o S.N.1(A)

Order.

The petition is rejected.

COMMISSIONER OF INCOME-TAX.

No. 7889
To

The appellants through their counsel Mr. L.S. Raju, M.A.(Hons)B.L., Bangalore City.

The Collector and Income-tax Officer, Civil and Military Station, Bangalore for information.

A
24/11

No. F-
Enclosures : Three-
(Encl. I. 4. Sheets.)
(Encl. II. 3. Sheets.)
(Encl. III. 2. Sheets.)

Collector &
Office of the Income-tax Officer,
Civil and Military Station, Bangalore.

Dated the 22nd Novr. *193*2.

FROM

G. H. Cooke, Esq., M.C., I.C.S.,
Collector & INCOME-TAX OFFICER, CIVIL AND MILITARY STATION,
BANGALORE.

To

The Secretary to the Resident
and Commissioner of Income-tax,
Civil and Military Station, Bangalore.

SIR,

S.N.5 (C)

With reference to your endorsement No.7749 dated 17th November 1932, I have the honour to forward herewith the records connected with the assessment of D. Syed Oosman and Company with the following remarks.

Asst. Records of :-
1) 1932-33
2) 1931-32
3) 1930-31
4) 1929-30
5) 1928-29
6) 1927-28 (D)

2. The Note of the Income-tax Officer on pp. 5 to 12 of the Miscellaneous Record for 1932-33 fully and clearly explains the considerations which led me to assess the firm on an income of Rs.50,000/- for the year 1932-33.

When the assessment proceedings were in progress, we got to know of a deposition made by Mr. D. Syed Hasham, the proprietor of the assessee firm, in the course of a suit brought by Messrs. Polson & Co., in which he had said that in addition to the Head office, the firm had five branches in the Cantonment. The assessee's return of income however referred only to two branches. A notice was therefore issued to the assessee under Section 22(4) for the production of the accounts of two other places of business, viz., No.39 D.S.O. Abbas & Co., and No.43-A D.S.Oosman & Co., which appeared from local enquiries made in September 1932 to continue to be branches of D. Syed Oosman & Co. But the assessee firm altogether ignored

(R)

the notice and neither produced the accounts nor said that they had no concern with those shops. The Managing Partner refers to three branches in his deposition before the District Court - vide extract dated 13-10-1932 enclosed. (E/2)

The main ground for the assessment made was, however, that the books shown by the assessee were unreliable and that the turnover which was based on those books, should accordingly be rejected altogether, and the income estimated. There was ample internal evidence in the books produced making it clear that the books produced had been specially prepared for the Department's consumption. (A)

3. Since making the assessment, I was able to see some of the real books of the firm. They were produced in the District Court in connection with a suit brought by the firm against one of their old partners who was in charge of Branch No.44. The assesssee had denied credit sales and had shown a note book, as the only account kept for the Branch, showing sales for the whole year 1931-32. The daily sales, according to that book, approximated to Rs.50/- a day. But it was found that the following account books are actually maintained:

(1) Daily sales book.- for cash sales.- The book is much larger in size than the one shown to the Department and runs to several volumes for a year.

Against daily sales of about Rs.50/- shown to the Department, the sales sometimes amounted to over Rs.500/- a day.

(2) Day book for credit sales.- Credit sales in branches had been entirely denied. This book shows credit sales and gives reference to ledger folios.

(3) The "Kurippu" Book.- This contains all the daily transactions of the shop, purchases and sales, cash as well as credit.

It is this book that gives one the true account of the turnover.

(4) Ledgers - for credit transactions.- Notes made by me from the above books will be found in the memorandum enclosed. (Encl-I) I/1

4. I need hardly say that if the above definite information had been in my hands at the time of the assessment, I should have assessed the firm under Section 23(4) of the Act, and considered favourably the suggestion of the Income-tax Officer that the assessee's firm was a fit case for penalty under Section 28 of the Act.

It is now abundantly clear that the assessee deliberately refrained from showing the correct books of the firm and equally deliberately manufactured false books for income-tax purposes.

This is clear also from the deposition made before the District Judge on 27-8-1932 by Mr. V.O. Abdul Rahiman himself the Managing Partner, (extract attached), in which he admits that the firm keep a Day book, Kurippu, Ledger, Cash (Sales) Book and Bill Book (for credit sales).

A perusal of the assessment orders relating to the assessment years 1930-31 and 1931-32 and other extracts from this man's deposition (enclosed) will also show that the assessee firm deliberately made the Department believe that no Day Books were kept and no inventory of stock was ever taken. But for the assessment year 1930-31, particulars were available for working out the profit or loss.

A translated copy of the latest agreement deed dated 1-7-1930 between the proprietor and the working partners and gumasthas is also attached for your information which shows the business-like manner in which the assessee conducts his business.

5. Considering the status of the firm in the station and the large amount of tax that they have apparently managed to escape by the non-production of their correct accounts, year after year, it seems to me that this is a fit case for prosecution, or in the alternative, for the levy of the maximum penalty admissible under the Act, and I would invite a reference to the correspondence with the Central Board of

Revenue ending with Mr. Tottenham's D. O. C.No.732(III)-I.T.-31 dated 13th June 1932.

I have the honour to be,

Sir,

Your most obedient servant,

Collector and Income-tax Officer.

Original placed below

(1) Books seen at the Dt. Court on 15.xi.32.

The Firm of
D. Syed Oosman & Co.
Branch,
Green Hall,
44, New Market Square,
Bangalore.

A number of books, of which I.T.O. has taken a detailed list, all relating to the business conducted at "Green Hall", 44, New Market Road, Bangalore, and marked accordingly.

I inspected.

(1) Sales book from 3rd August 1930 to 15th July 1931. This was never produced before the I.T.O. or me.

This book relates only to cash sales and these are some of the total daily cash sales.

	Rs.	a.	p.
1st July 1931	141	14	7
2nd " "	275	0	11
3rd " "	241	2	6
4th " "	181	6	11
5th " "	225	7	4
6th " "	163	3	3
7th " "	162	0	2
8th " "	148	14	0
9th " "	152	2	0
10th " "	117	7	2

Thereafter there is the entry "See other book".

Some other examples of daily totals are

1st June 1931	390	14	1
2nd " "	217	14	3
3rd " "	*340	6	8
4th " "	190	8	2
5th " "	158	11	11
9th " "	213	14	8
21st " "	246	10	10
26th April 1931	340	11	4

I also saw Day book

(D. Syed Oosman & Co. Branch)
(Green Hall,)
(44, New Market Road,)
(Bangalore.)

from 10th March 1930 to 15th February 1931. This contains details of all credit transactions with ledger folio numbers in the margin.

I also saw Ledger, No.A.4 commencing from November 1928.

Item. Page 251.

Credit account of Mrs. A.M. Blanchard shewed purchases from 5th July 1930 to 30th July 1931, shewing payments of the following amounts amongst others:-

	Rs.	a.	p.
16th April 1931	40	0	0
22nd " "	200	0	0

The Balance due by the customer on 1-4-31 was Rs.295-11-8.

Other payments she made were.

		Rs.	a.	p.
6th May 1931	...	55	11	8
24th "	...	200	0	0
1st July 1931	...	200	0	0
22nd "	...	200	0	0

On 30th July 1931 the balance due by the customer to the firm was Rs.332-13-1 and there is a note that the account has been carried forward to Bill book No.8 page 583.

I also saw Kurippu Book

(D.S.O.& Co.)
(Green Hall)
(etc.)

from 8th October 1928 to 24th July 1931.

Vide notes at the top of page 2 of this note.

(The entry in this book for the 3rd June 1931 shews
(Collections in the till (i.e.
(Cash sales 340 6 8

and the cash sales for all other dates as recorded above, are also in this register.

This

This book gives full details of all items of receipt and expenditure for each day: Each totalled and a balance struck.

It is clear that had this book been produced, it would have given the I.T.O. detailed information of the complete transactions of this particular branch of the firm. Neither this book, or any of the other books referred to in this note, were produced before the I.T.O ; in fact their very existence was totally denied.

The I.T.O., his accountant, and the Registrar of the Dt. Judge's Court were present when I examined these books, after taking the permission of the District Judge.

Sd/- George H. Cooke,
10.xi.32.
Asst. Commr. of I.T.

Enclosure I (4 Sheets)

Books seen at the Dt. Court on 15.x.32

D. The Manager of the D. Eyed Boomers Brand Green Hall New Market Square Bangalore

A number of books, produced by T.O. by letter & detailed list, all relating to the business conducted at "Green Hall" Old New Market Road, Bangalore. & marked according

Inspected.

D. Sales book from 3rd August 1930 to 15th July 1931. This was never produced before T.O. or me.

This book relates only to cash Sales. and the sum of the total daily cash sales.

	Rs.	As.	P.
1st July 1931.	141.	14.	7.
2nd " "	275.	6.	11.
3rd " "	241.	2.	6.
4th " "	181.	6.	11.
5th " "	225.	7.	4
6th " "	163.	3.	3.
7th " "	162.	0.	2.
8th " "	148.	14.	0.
9th " "	152.	2.	0.
10th " "	117.	7.	2.

Thereafter Rs & Rents "see other book"

Some other examples of daily totals are

1st June 1931.	390.	14.	1
2nd " "	217.	14.	3

(2)

3rd June 1931

4"

5"

6

21st

* 340.	6.	8
190.	8.	2
158.	11.	11.
213.	14.	8.
246.	10.	10
340.	11.	4.

6th April 1931.

Jabo Bud

Day book

D Ger Bosman & Co. Branch
Green Hall
44 new Market Road
Bangalore

From 1st March 1930 to 15th Feb. 1931.

This contains details of sale credit transactions with ledger folio numbers in the margin.

Jabo Bud Ledger, vol A 4.

Commences from November 1928.

Vide. Page 251.

Credit account of Mrs. A.M. Blanchard
shewing purchases from 1st July 1930
to 31st July 1931. Shewing payments
of the following amounts amongst Mrs:-

	Rs	A.	P.
16th April 1931.	40	0	0
22nd " "	200.	00	

(3) 3/

The Balance due by the customer on 1-4-31 was Rs 295-11-8.

Other payments to be made are.

	R. A. P.
6th May 1931.	55. 11. 8
24th	200. 0. 0
1st July 1931.	200. 0. 0
22nd	200. 0. 0

On 30th July 1931 the balance due by the customer to the firm was Rs 332-13-1. and there is a note that the account is to be carried forward to Bill book no 8. page 583.

D.S.D. TCO. Received etc.

Sales Book

From 1st October 1928. to 24th July 1931

No entry in this book of the 3rd June 1931

Items Collections in the bill (i.e. cash sales) 340. 6. 8.

and the cash sales of all other dates recorded above, are also not registered in this book. Full details of all items of receipt & expenditure

Note made at the top of page 2. of this note

(47)

for each day Cash totalled and
a balance struck

It is clear that Law Rs have been
produced if under Law for the
I.T.O. details information of the complete
transactions of the partnership branch
of the firm. Neither the book, or
any of the other books referred to in the
note, were produced before the I.T.O. in
fact Mr. Ray contends the totality
denied

The I.T.O, his accountant, and the
Registrar of the Dr. Judge Court were
present when Dr examined these books,
after taking the permission of the
District Judge

Jayatilaka
10.XI.52
Asst. Com of I.T.

Enclosure II (3 Sheets)

Extract.

from the sworn deposition of V.O.Abdul Rahiman, Manager, D.Syed Oosman & Co., in O.S.No.24/30 on the file of the Dt.Judge, C. & M. Station, Bangalore.

4th August 1932.

(i.e the assessee in this case)

I am manager of Plff's Co. ~~(the assessee in this case)~~ at the Head ~~Offi~~ Office.

27th August 1932.

There was a settlement in April 1926. The next settlement was in October 1927 The next one was in March 1930.

Just before arriving settlement it is usual to take stock in my shop. In taking stock of branches one or two persons are deputed from the main office and they work jointly with the Kahstakoottali (Working partner) of the branc Some of the articles are valued, others not. Articles which bear values marked on them are valued, others not. Entrie are made on rough papers and then -- entered in a book of the Kashtakoottali of the branch. He puts the value of th stock. This is the practice from the beginning.

We keep day book, kurippu, ledger, cash (sales) book and bill book (for credit sales). Each branch people have to write their own books.

4th October 1932.

There was stock taking in October 1927.

There was another stock-taking in

March 1930. The settlement was signed on 3-8-1930. It was upto 31-3-1930. There was no settlement in March 1930. Profit and loss can be determined only after settlement. It was known after 3-8-1930.

Head Office accounts have not been settled at all from 1926. For branches here and in the City and in Madras -- accounts were settled. It may have taken 10 days or more.

I am the manager of D.Syed Oosman & Co

13th October 1932.

There was no settlement in October 192[illegible] 1927 or in March 1930. There was only stock-taking and valuation and list of outstandings by and to was made on both the occasions.

There was one branch in the City, three in Cantonment and in Madras. Head Office is separate.

List of stock had been given to us by No.44 in 8 or 9 stitched note books (foolscap size).

I cannot say if all were finished in 10 days.

The original stock lists came to our hands * * * 10 or 15 days later I gave them to No.44 to put prices on the

19th October 1932.

There is account for all purchases made. There is value of old stock also in the books. Profit and loss may be found from stock account, sales and purchases.

Enclosure III (2 Sheets)

[Previous statement was dated 10th March 1939]

1

Note

This is a true translation of Tamil Deed which has been furnished by Accountant Gr 2 Registrar Bangalore.

Deed of Agreement dated 1st July 1930 entered into by the working partners, Gumastas (clerks) of the head office in the New Market, Bangalore Cantonment and of the other branches attached to it, and also of the City and Madras Branches with the master, sole proprietor, and owner of the firm D.Syed Oosman of the New Market Sq., Bangalore Cantonment, Civil & Military Station, - Mr. D. Syed Hasham.

(1) We the working partners of the different concerns do hereby agree to abide by your orders and carry on the business with your explicit orders.

(2) We also agree to your removing any working partner who may be treacherous or proceed in a wrong path, or put any obstacles to the business, after giving him his share of profit up to the date of dismissal, either on the basis of subsequent computation or on the basis of the last computation of profits or on the basis of your sweet will and pleasure.. In case there is loss in the business, we agree to the entire recovery from us of our personal drwings in that year.

(3) If at the time of computation of profits any of us, (the working partners) were to express any wish to secede from the business or any of us were at the discretion of the proprietor himself, ousted, we agree to settlement either by receiving amounts due to us or by paying back amounts due by us. If before a computation any were to leave the business of his own accord or were ousted by you on account of reasons stated in paragraph 2 above, we agree to receive whatever amount you may fix by way of salary in lieu of share of profits.

(4) We, working partners, have no manner of right over either the stock on hand or the immovable property belonging to the firm.

(5) If any one of us were to require any drawings, we will take them either under your orders or under the

orders

orders of the authorised working partner in the head office, and pass a chit or letter in token of the receipt. Excepting postage, we will not without your orders draw any amount either for cash expenditure or for cloth and will not also take any articles for our consumption. We agree to any action taken against us in case we disobey any of the above instructions. Every month we will send a copy of our drawings to the head office. Once in three months we will submit a statement of outstandings on either ways. The Madras Branch will send every day, as usual, a daily extract of day book. If any one of us were to go on leave to our places, we will return within the due date. If we were to exceed our permitted time, we are prepared to have our account debited with the amounts on account of overstayal.

(6) We agree either to the alteration of the names of any branch or to the transfer of any employee or working partner to any branch. We also agree at your will to the discontinuance of any branch and to the transfer of any employees or working partners to any other branch or to their discharge.

(7) In cases of credit allowed to our merchant customers we will ascertain beforehand whether they are business-like in their dealings or not and we will effect prompt recovery of their outstandings every month. If such trade-debtors were to default, we will take prompt action in giving lawyer notices, filing suits, and effecting collection. In the name of the firm, nothing will be transacted with the customers for anyone else's personal consideration. If we disobey this rule, we are prepared to undergo any punishment meted out to us. We agree to have our accounts debited with any amount that may arise from out of any of our private transactions and transactions unconnected with the business.

2

(8) We agree to pay our creditors in time and settle their accounts. If there happens to arise any amount received from customers but not passed through the firm's books, we agree to debit such items in the concerned employees or working partner's accounts.

(9) We agree to maintain daily the accounts properly, to ascertain the exact daily cash balances, and to record properly and correctly the daily sales. At the end of each day, if one goes on counting the cash on hand, the other will enter the cash balance in the books then and there. In case there should aris any shortage in cash, the employees of that shop agree to be responsible for such a shortage.

(10) Either to relatives or to friends we will never lend money nor give any goods in credit. We will not also have transactions with them. We will not also stand surety to any one.

(11) We will always go by your decision either in the matter of purchases or in the matter of taking up godowns and shops for rent, or in the matter of purchasing properties from debtors in lieu of their debts. While booking orders either to England or America, we will consider beforehand the probable demand that there might be and will dispose of these goods at good prices. We will never import new makers. We will never monopolise dealings in any particular kind. We will also never have money-lending transactions.

(12) In the above business, a statement of affairs will be ascertained either once in three years or at dates whenever you may wish the same to be done. In doing so, after deducting the usual items, either from stocks or from the sundry debtors, the net profit of the head office will be distributed. The profits from the branches will be first of all apportioned to the capital invested and the goodwill of the business. The balance will then be distributed among the respective

employees

employees and working partners of that particular branch in accordance with your will and pleasure. In case there happens to be a loss in any branch we do not claim any remuneration for our labours. On the contrary we even agree to the recovery of any amount that may stand debited to our drawings account. If there be any of our (employees or working partners) amounts with the firm we do not claim any interest on them. It is your pleasure to create new shares. It is also your pleasure either to increase or decrease the existing shares.

(13) If three months' previous intimation were given for the preparation of a statement of affairs, we will start collecting all the out-standings, sell away all the stocked goods and will thereby try to reduce the stock.

(14) We will agree to all the conditions in the above 13 paragraphs and also agree to abide by any other directions which you may issue at any time and under any circumstances.

This is the agreement executed by us all unitedly:-

(Sd) V.O. Abdul Kadir. ek ek

(Sd) V.O. Abdul Rahim ek ek

(Sd) V.P. Abdul Razack

(Sd) P. Abdul Samad.

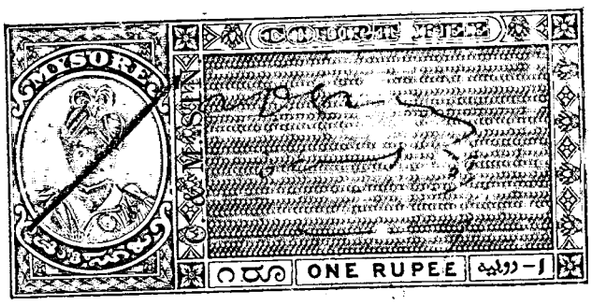
(Sd) V. Pir Mohd Wahab

(Sd) S. Abdul Aziz

ek. ek. ek.

True Translation
Registered.

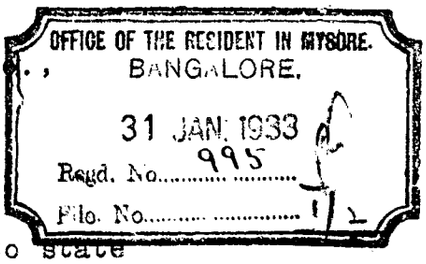
True Copy
(Sd) D. Sye



8

IN THE COURT OF THE ASSISTANT COMMISSIONER OF INCOME TAX.

In the matter of the Income Tax appeal of
Messrs D. Syed Oosman & Co., 47-49 New Market Square,
Bangalore.



Petitioners :- Messrs D. Syed Oosman & Co.,
New Market Square,
Bangalore.

The petitioners abovenamed beg to state as follows :-

1. That they do not desire to proceed with the appeal filed by them and pray that the same may be returned to the petitioners, as they want to file a Review to the Commissioner of Income Tax.

S.N.1 (A)

Bangalore.
27/1/33.

Sd/- Syed Osman
(Sd) V.O. Abdul Rahiman Sahib

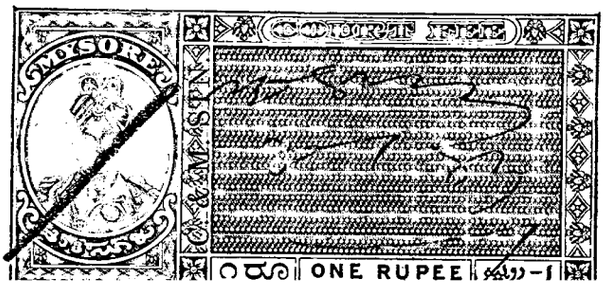
II. THE COURT OF THE ASSISTA

COMMISSIONER OF INCOME TAX.

In the matter of Income Tax
appeal of Messrs D. Syed Osman & Co

Petitioners :- Messrs D. Syed Cosman
& Co.

Withdrawal Memo.



In the Court of the Asst. Commissioner of Income Tax BANGALORE.

No. of 193

~~Plaintiff~~ *Vs* ~~Defendant~~

Messrs Syed Osman & Co Petitioners

I/WE the petitioners above named do hereby appoint and retain MR. J. L. D'SILVA, B.A. B.L. and ~~MR. P. A. NAZARETH, B.A., M.B.~~, to appear for ME/US in the above case and **to conduct and prosecute (or defend)** the same and all proceedings that may be taken in respect of any application for execution of any degree or order passed therein. I/WE empower MY/OUR Advocates to appear in all miscellaneous proceedings in the above suit or matter till all decrees or orders are fully satisfied or adjusted and to obtain the return of documents an draw any moneys that might be payable to ME/US in the said suit or matter.

BANGALORE.
30/1/1933.

~~M. Syed Osman~~
(Sd) V. Osman Sahib Petitioner

Personally known to me
and Signed before me.

Accepted

Advocate for Petitioners

Accepted

Advocate for

In the Court of the [illegible]

Income Tax Bangalore

No. of 193

[illegible]

~~Plaintiff:-~~

Versus.

~~Defendant:~~

Vakalath

J. L. D'SILVA ESQR., B.A., B.L.,
Advocate for [illegible]
BANGALORE.

The Reliance Press, Bangalore

9

IN THE OFFICE OF THE ASSISTANT COMMISSIONE
OF INCOME-TAX,
CIVIL AND MILITARY STATION, BANGALORE.

4922 ---

Dated the 3rd July 1933.

Before:- Major G. Kirkbride, I.A.,
Assistant Commissioner of
Income-tax.

Income-tax Appeal Petition No.1 of 1932-33

Messrs. D. Syed Oosman & Co.,
New Market Square,
Civil & Military Station,
B a n g a l o r e.

Appellants.

------- (A) S.N. Iaviz

This is an appeal preferred by Messrs. D. Syed Oosman & Co., wholesale and retail dealers in oilmanstores, etc., New Market Square, Bangalore, against their assessment for 1932-33, under section 23(3), on an estimated income of Rs.50,000/ from business and Rs.399/- from property. The income returned by the firm was Rs.907/6/4 from business and Rs.399/- from property.

(H)

(R)

2. The appellants have since filed a petition stating that they do not wish to proceed with the appeal and praying that

(P.U.C.)

S.N.8 (BB)

it

it might be returned to them, as they want to file an application for review under section 33. It is therefore not necessary for me to consider the various points raised in the memorandum of appeal.

(A) S.N. Jauhi

3. On an examination of the records, I find that the assessees have deliberately furnished inaccurate particulars of their income and have thereby returned it below its real amount. There has been a gross misstatement of income and nearly the whole amount of tax now levied on the assessees would have been avoided if the income returned by them had been accepted as correct. I therefore consider that action should be taken against the assessees under section 28, and accordingly direct them to show cause, in writing, on or before the 15th day of July 1933, why they should not be proceeded against under that section.

27/6

Asst. COMMISSIONER OF INCOME-TAX.

To

L. D'SILVA, B.A., B.L.,
ADVOCATE

NOTARY PUBLIC.

Office Hours: 8 to 11 a. m. & 4 to 6 p. m.

Residence: No. 4. Walton Road,
St. Mark's Square. Bangalore.

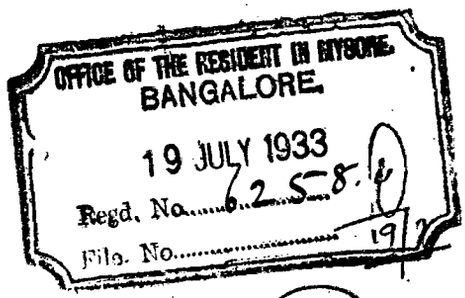
Tel. Addr. "Desilva," Advocate.

3 CO/A 1912

10

OFFICE:
LADY CURZON ROAD.

Bangalore, 15th July. 1933.



S.N.9 DD

Major G. Kirkbride I.A.
Assistant Commissioner of Income Tax,
Bangalore.

Dear Sir,

With reference to your order No. 4922 dated 3rd July 1933 in the Income Tax Appeal No. 1. of 1932/33 which has been served upon me, and under which you have directed my clients to file a written statement by the 15th day of July 1933, I request you to grant me furth time in order to enable me to file the same in writing, as I have not been able to get full instructions from my clients.

Thanking you.

Yours faithfully,

L D'Silva

JLD/OG.

E 16

11

No. 5323

dt. 22.7.33

From

Major G.Kirkbride, I.A.,
Assistant Commr. of Income-tax,
C. & M. Station, Bangalore,

To

J.L.D'Silva, Esqr., B.A., B.L.,
Advocate, Lady Curzon Road,
Bangalore.

S.N. 1. (A) auth

S.N.10. P.U.C.

Income-tax Appeal No.1 of 1932-33: Messrs. D.Syed Oosman & Co., New Market Square, Bangalore - Proceedings under section 28 of the Income-tax Act - Your letter dated the 15th July,1933.

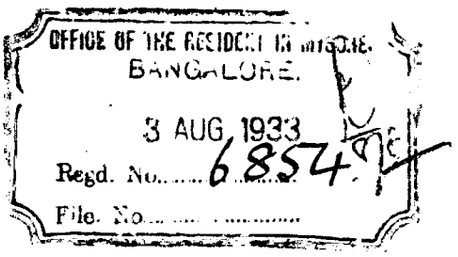
You are allowed time till Monday the 7th August 1933 to file the written statement on behalf of your clients.

ASSISTANT COMMR. OF I. T.

19.7.33

R 718

12



IN THE OFFICE OF THE ASSISTANT COMMISSIONER OF INCOME TAX.

CIVIL AND MILITARY STATION, BANGALORE.

Income Tax Appeal No.1. of 1932-33.

PETITIONERS :- Messrs D. Syed Oosman & Co.

S.N.9

DD

In answer to the order calling upon the assessees under Section 28, the assessees beg to state as follows :-

1. That the assessee firm D. Syed Oosman & Co., has its head office at No. 47-49 Russell Market Bangalore. It deals in oilmanstores, patent medicines and are wholesale dealers in sugar and flour. They have also a connection in this station with D. Syed Oosman & Co., carrying on business as No. 44 Russell Market Bangalore and D. Syed Oosman & Co., No.40 Russell Market Square Bangalore.

In previous proceedings of Income Tax these assessees have been calling these as their branches, but they are really patnership concerns in which D. Syed Oosman & Co., Head office have a two third share and one third share goes to other partners of the respective business and they have been separated for future assessments.

2. The No.44. shop deals in oilmanstores, patent medicines and wholesale flour and sugar sales. No. 40 shop deals in oilmanstores and patent medicines.

3. Similarly the petitioners have a business connection in the Bangalore City and in Madras which however pay a separate Income Tax on their respective Incomes.

4. The components of the assessee firm are mostly illiterate in English and are not versed at all in keeping of accounts according to the recognised Mercantile basis, and they have been adopting for all these years the local method of keeping accounts in vernacular and as such they have at no time maintained an opening stock book or a closing stock book. They maintain what is known as a Cash sales book, day books and ledgers.

5. The usual mode of business is that at the end of each day, each of the shops No. 44 and No. 40 send their sales account which are entered in the Head office books. All these years the Head office has been submitting a return from the accounts entered in the Head office books and accordingly for the year 1931-32 they submitted a return according to their head office books and showed a profit of Rs.907/6/4. Further not being quite conversant with English and the requirements of the Income Tax Act these assessees have been accustomed to send their returns which the department and themselves merely took it as a starting point for assessment of Income Tax and year and year these assessees have been assessed on estimate and year and year the same procedure has been followed. When therefore they submitted the return for 1931-1932 as Rs.907/6/4 they did do it with the idea that the same would be accepted and consequently they would be exempted from Income Tax but that as in previous years, they would be taxed on an estimate in the region of about Rs.15,000/-

6. It was later however discovered that the books maintained at No. 40 and 44 shops showed actually more sales than those disclosed by them to the Head office and which had been entered in the Head office accounts. In submitting therefore the return for the year 1931-32 the assessees had not been actuated by any motive to deceive the Government and the return made by them is absolutely true according to the books maintained by the Head office. The assessees were however deceived

by their branches and as soon as they became aware of this, they have tendered a correct statement of accounts for the previous year of 1930-31 but for the year 1932-32 before they could do so. they have been assessed on an estimate and have been now assessed on an Income of Rs.50,000/- for the business.

7. The assessees beg to submit that the said assessment of Rs.50,000/- is very heavy and out of all proportion to the Income of the petitioners considering the very great depressed times and the small nature of their business. The gross sales as now disclosed by the branch books for the period of 1931-32 amount to Rs.5,25,716/5/11 as per statement filed herein being the Head office sales and two third sales of the branches and if the usual mode of theirs on the turn over basis is made even at 5% it comes to only Rs.26285/- gross Income and Rs.15245 as nett income which is no where near the region of Rs.50,000/-

8. That after the instructions given by the Income Tax officer during the last assessment, your petitioners' have been maintaining regular opening and closing stock books and they have got their accounts properly audited and according to the annual statement the Income made by the assessees and return by them for the year 1932-33 is only Rs.10771/7/- as net Income on business alone for the Head office. The other business will tender separate returns.

9. The assessees therefore pray that in submitting their Income for the year 1931-32 they had no idea of concealing the Income and it was due to the deception played upon them by their branch office and they followed the practice which unfortunately they were not led into believing was contrary to law. They have been very loyal subjects of government and have been carrying on a comparatively small business and the tax imposed on them has been very heavy.

10. The petitioners are not aware as to how the Income Tax officer states that they have not disclosed the accounts of their other branches. They have no further branches than those mentioned here. It is quite possible that he has taken into consideration a branch which belongs to D. Syed Hasham, the capitalist of the petition firm and not to these petitioners.

Under the circumstances the petitioners pray that no action be taken under Section 28 against them and that this Hon'ble Court may be pleased to review the whole case in the light of the facts stated above and in the light of a fresh statement of accounts filed herewith and pray that they may be assessed accordingly.

What is stated above is true to the best of my knowledge and belief.

Bangalore.
Dated. 5/8/33

D. Silva
Advt for Petr.

Statement of account from 1-4-1931 to 31-3-32.

12/a

Credit Sales.

Head office			2,29,235 1 9
44 Branch 2/3 of their credit sales of Rs.30,850/2/-			20,566 12 0
40 Branch 2/3 of their credit sales of Rs.41,207/14/7			27,471 15 0
Head Flower & sugar sales ...			1,43,741 11 0
City office goods supplied ...			26,920 12 1

Cash Sales.

Stores:

Head Office Cash sales ...			16,981 7 10
44 Office 2/3 of their cash sales of Rs.50,875/9/2 ...			33,917 0 9
40 office 2/3rd of their cash sales of Rs.40,322/6/3 ...			26,881 9 6
			5,25,716 5 11

30,250
41,207
50,875
40,322
1,73,254

Gross income at 5% 26,285 0 0

Expenses :-

Head Office

Light	360 0 0		
Salaries	6000 0 0		
Rent	900 0 0		
		7,260 0 0	

44 Branch

Light	80 0 0		
Salaries	1200 0 0		
Rent	660 0 0		
		1,940 0 0	

40 Branch

Light	90 0 0		
Salaries	1200 0 0		
Rent	550 0 0		
		1,840 0 0	
			11,040 0 0
Net Income		Rs.	15,245 0 0
House properties	478 0 0		
Less 1/6	79 0 0		
			399 0 0

IN THE OFFICE OF THE ASSISTANT

COMMISSIONER OF INCOME TAX.

Civil and Military Station, Bangalore.

Income Tax Appeal No. 1. of 1932-33.

Petitioners :- Messrs D. Syed Oosman & Co.

Statement of petitioners.

13

MEMORANDUM.

No. 9986

From Major G. Kirkbride, I.A.,
Commissioner of Income-tax,
C & M. Station, Bangalore.

Bangalore, dated 20th October 1933.

To J.L.D'Silva, Esq., B.A., B.L.,
Advocate,
Lady Curzon Road,
Bangalore.

S.N-14

Income-tax Appeal Petition No.1 of 1932-33 - Messrs. D. Syed Oosman & Co., - Proceedings under Section 28.

Please take notice that the above case has been posted for hearing at 11 A.M. on Thursday the 2nd November 1933.

COMMISSIONER OF INCOME-TAX.

19.10.33

J. L. D'SILVA, B.A., B.L.,
ADVOCATE
NOTARY PUBLIC.
Office Hours: 8 to 11 a.m. & 4 to 6 p.m.
Residence: No. 4. Walton Road,
St. Mark's Square, Bangalore.
Tel. Addr. "Desilva," Advocate.

OFFICE:
LADY CURZON ROAD,

Bangalore, 6th December. 1933

OFFICE OF THE RESIDENT IN MYSORE.
BANGALORE.
8 DEC. 1933
Regd. No. 10648.

INCOME TAX OFFICER
7- DEC. 1933
C & M STATION BANGALORE.

The Commissioner of Income-Tax,
C & M Station,
Bangalore.

Re: Income Tax appeal No.1. of 1932-33.
D. Syed Oosman & Co.

Bear Sir,

With reference to the above appeal which is coming on for hearing on the 9th instant, I shall be obliged if you will kindly adjourn the date to some other date next month as my clients have applied for certain certified copies from the Court which they have not yet received, and further they want a Madras Counsel to appear in this matter and it is not possible for him to appear on the said date.

I shall therefore be highly obliged if you will kindly grant me

the adjournment asked for.

Thanking you.

I beg to remain

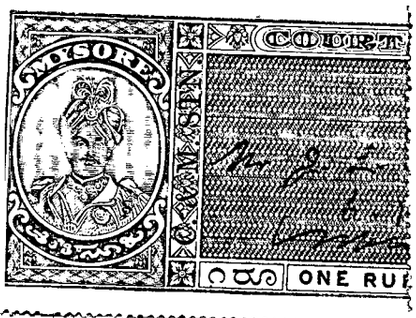
Sir,

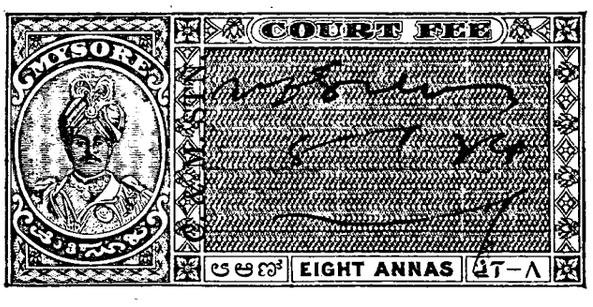
Yours obediently,

J LD/OG.

Mis. 337
7/12/33

Bangalore
7.12.33





IN THE COURT OF THE SECRETARY TO THE RESIDENT IN MYSORE
AND COMMISSIONER OF INCOME-TAX
BANGALORE

~~BANGALORE.~~

Income Tax appeal No. 1 of 1932-33

~~Plaintiff~~ *Vs* ~~Defendant~~

Petitioners :- D. Syed Oosman & Co.,
New Market Square,
Bangalore.

WE the petitioners abovenamed do hereby appoint and retain Mr. C. Brooke Elliott K.C. Bat-at-Law ~~and Mr. P. A. Nazareth~~, to appear for US in the above case and **to conduct and prosecute (or defend)** the same and all proceedings that may be taken in respect of any application for execution of any degree or order passed therein. I/WE empower MY/OUR Advocates to appear in all miscellaneous proceedings in the above suit or matter till all decrees or orders are fully satisfied or adjusted and to obtain the return of documents an draw any moneys that might be payable to ME/US in the said suit or matter.

BANGALORE.
8/1/1934.

Personally known to me
and Signed before me.

~~Partner of the firm of~~
~~M/s D. Syed Oosman & Co.~~
(V. C. Abdul Rahiman)
Partner, D. Syed Oosman & Co.

Accepted C. Brooke Elliott.
Advocate for Petitioner

Accepted
Advocate for Petitioner

IN THE COURT OF THE SPECIAL JUNIOR TO THE
TO THE RESIDENT IN MYSORE AND
COMMISSIONER OF INCOME - TAX
BANGALORE

In the Court of the

Bangalore

Income tax A. No. 1 of 1932-33

Between — Petitioner :-

D. Syed Osman & Co.

and

Vakalath

Advocate for

BANGALORE.

The Reliance Press, Bangalore

18

IN THE OFFICE OF THE ASSISTANT COMMISSIONER OF INCOME TAX.

CIVIL AND MILITARY STATION.

BANGALORE.

Income Tax Appeal No. of 1932-33.

Petitioners :- Messrs D. Syed Oosman & Co.

I, V.C. Abdul Rahimon, son of Chabu Mian Sahib, aged about 50 years, residing at 47 New Market Square, C.M. Station, Bangalore do hereby solemnly affirm and say as follows :-

1. I am the Managing Partner of Messrs D. Syed Oosman & Co., the firm which is the assessee in these proceedings. The other two partners are D. Syed Hashim and V.C. Abdul Khader Sahib.

2. The firm of D. Syed Cosman & Co., has its head office at 47-49 New Market Square Bangalore Cantt and a connection in the Bangalore City and another in Madras. These firms have been assessed to Income Tax by the Mysore and Madras Income Tax authorities respectively. The firm owns a two third share in D.S. Oosman & Co., No.40. New Market Square and in D.S. Oosman & Co., No.44 New Market Square Bangalore Cantonment. These two firms are really independent firms. But as the firm of Messrs D.Syed Cosman & Co., holds a predominant share in those firms, they were being treated for all practical purposes as branches of Messrs D. Syed Oosman & Co., the assessee firm. Barring these two branches the assessee firm has no other branches in the Cantonment.

(H)

3. In the course of the assessment order passed by the learned Income Tax Officer which is under review in the present proceedings he has stated as follows :- "the assessee has not taken into account the total sales of three other branches which, as the

assessee himself had admitted in the course of judicial proceedings in the District Court belong to him." The attention of the assessee was not drawn to particular judicial proceedings in which the alleged admission was made nor were they informed as to the name of the partner who had made the admission.

4. Accordingly I had to go through the depositions which myself and two other partners had made in the several proceedings to which we were parties and I found that the only place where a statement regarding the branches has been made is in the deposition of D. Syed Hashim, the plaintiff in C.S. No.99. of 1930 on the file of the District Judge Chief Station Bangalore. I find that Syed Hashim, in the examination in chief has stated as follows :- " I have got the head office and five branches in the Cantonment, one branch in the City and another in Madras", and in my deposition in C.S. 24 of 1930 I have stated as follows "There are one branch in the City, 5 in the Cantonment and one in Madras" Through an oversight I stated that there were three branches in the Cantonment. In my re-examination I have corrected this mistake by stating 'Branches 40 & 44 belong to the Plaintiff in the Cantonment."

5. If the learned Income Tax Officer was referring to this statement of Syed Hashim when he made the observations referred to in para (3) supra, I beg to submit that it has no reference to the Messrs D. Syed Cosman & Co., the assessee firm. Evidently D. Syed Hashim's explanation was not understood regarding the different firms in which he held shares. Besides his share in Messrs D. Syed Cosman & Co., and in its two branches situated at No.40 and 44 it is that he has in his personal capacity a 1/11th. share in the firm of Messrs D.S.C. Abbas & Co., No.39 Lower Mount Street and in its branch at No.39 Brodies. Messrs D. Syed Cosman & Co., as firm is not entitled to a share in the profits

of the said D.S.C. Abbas & Co. In fact the said firm submits its own income tax returns and is assessed separately to Income Tax. A demand notice for the year 1932-33 served upon D.S.C. Abbas & Co., is produced herewith. Evidently this fact had not been brought to the notice of the learned Income Tax Officer and he has accordingly proceeded on an incorrect basis of facts to the great prejudice of the assessee firm.

Encl-2

6. I beg to further submit that in sending the return of Income of Messrs D.S. Cosman & Co., for the year 1931 to 1932 the firm followed the procedure which had uniformly been adopted in making the returns for previous years. Year after year, the assessee firm had calculated its gross income on the basis of a percentage on the total turnover in the course of the particular year and had calculated the net income by subtracting certain charges from the gross Income been approved of by order of A.F.L. Carter Esqre I.C.S., the Secretary to the Resident and Commissioner of Income Tax, in Income Tax appeal No.?. of 1934 in which he had directed that the profits on sugar and flour sales should be calculated at ¾ per cent net and that the profits on oilmanstores sales should be calculated at 5% net. A certified copy of the said order is produced herewith.

R

* Encl-4

SOLEMNLY AFFIRMED by the said V.C. Abdul Rahimon this 8th day of January 1934, in the presence of the undersigned, the contents of the same having been read over to the deponent in Tamil.

V.C. Abdul Rahimon

J. Ramachandra Sundaram
Registrar,
District & Sessions Court,
C & M Stn. Bangalore.
8-1-1934.

ಮೂರು ಆಣೆ

In the Court of the District Judge,

Civil and Military station of Bangalore.

This 4th day of August 1932.

Original Suit No. 24 of 1930.

Deposition of V. O. Abdul Rahiman 1st witness for plaintiffs solemnly affirmed:- Age 48 years, Race Lubbai Mahomedan, Religion Islam, Father's name Chabu Mean Saheb, Resident of New Market Square, Bangalore Cantonment, Occupation merchant. I am manager of plaintiffs Company at the Head Office. Defendant was Kasthakootali in No. 44 branch here till 1-10-1930. He executed an agreement in favour of D. Syed Hashim Saheb on 1-7-1930. It is Exhibit A. Defendant has signed it. He executed another agreement on 1-3-1927. Ex. B is its copy. Exhibit B(1) is its Madras High Court Translation. The accounts of No. 44 were settled in 1930. Accounts were taken up to 27-3-1930. Amount due by defendant to the company and that due to him were settled, balance was struck and his signature obtained. It is Exhibit C. The balance is shown on page 73. It

CIVIL & MISCELLANEOUS COURT * DISTRICT * BANGALORE

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is Rs. 2820-14-3. Defendant had dealings from April till August. A balance was struck up to 31-7-1930 and his signature obtained on 5-8-1930. The amount is Rs. 2891-14-6. It is Exhibit D. Defendant drew sums subsequently up to 1-10-1930 Rs. 80-0-0 and odd. We received a payment of Rs. 0-5-0. The balance is Rupees 2971-13-6. He was given a credit of Rs. 82-1-0 as per the wish of Ejman for defendant's services. The balance is Rs. 2889-12-6. It is Exhibit D(1). Plaintiff has claimed interest from 27-3-1930 to 1-10-1930 at 1 per cent per mensem. The amount is Rs. 176-3-6. Total amount due is Rs. 3066-0-0. I swear that the account is correct. Defendant signed in the book twice after the accounts were written. I have signed " D. Syed Oosman & Co" before him in Exhibit C. I was present when defendant signed it. In C. S. 44 of 1928 on the file of the Madras High Court filed by V. M. Abdul Razack and others against myself and others this defendant was the

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6th defendant. He filed a written statement therein and an affidavit. Exhibit E is a certified copy of the affidavit. The plaintiff company issued a notice to defendant terminating his services and demanding payment of Rs. 2889-12-6 due from him. It is Exhibit F. No reply was received. I signed Exhibit C for the plaintiff company. Defendant has dated his signatures Exhibits C and Exhibit D. The body of Exhibit C (page 73) and of Exhibit D is in Inayatulla's writing. Suit amount is due.

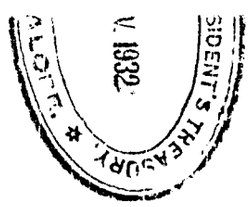
Sd/- V. O. Abdul Rahiman in Tamil.

Taken down by me in open Court and interpreted to the witness and acknowledged by him to be correct.

Signed/- C. V. Reddi,
District Judge.

Solemnly affirmed and cross-examined on 27-8-1932.

There was a settlement in April 1926. The next settlement was in October 1927. The next one was in March 1930. There was no further settlement. Just before every settlement it is usual to take stock in every



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shop. In taking stock of branches one or two persons are deputed from the main office and they work jointly with the Kasthakootaji of the branch. Some of the articles are valued, others not. Articles which bear values marked on them are valued, others not. Entries are made rough on papers and then entered in a book by the Kasthakootaji of the branch. He puts the values of the stock. This is the practice from the beginning. Inayatulla is in our shop for 10 or 12 years. Abdul Samad is in Madras branch from 1921. Before it he was in No. 44 branch. We keep day book, Kurippu, Ledger, cash (sales) book, and bill book (for credit sales) Each branch people have to write their own books. In Ex. C pages 1 to 51 are in the writing of one Krishnaswamy Mudaliar of No. 43 branch including the figures. Inayatulla has written on page 53 and 58. Pages 55 to 57 are in Wahid's writing. Pages 66 to 73 are in Inayatulla's writing. On page 101 of Ledger Exhibit D Abdul Wahid

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has written the heading and first entry. The rest are all in Inayatulla's hand. Page 102 is in Abdul Wahid's writing. On 121 the first entry is by Abdul Wahid and the rest by Inayatulla. The same is the case with page 145, 151, 157, 215 and 218. Abdul Wahid has written the 2 entries on page 217 and the account of Muhammad Khassim on page 218.

Sd/- V. O. Abdul Rahiman in Tamil.

Taken down by me in open Court and interpreted to the witness and acknowledged by him to be correct.

Sd- C. V. Reddi,
District Judge.

Solemnly affirmed and cross-examination continued on

4-10-1932.

Inayatulla writes our head office accounts He does not work or write accounts in No. 44. If somebody fall ill and he be sent he does work there. He is not in the habit of writing No. 44's accounts. He did not write prior to Exhibit D. He has written settlement for 1926 and 1927 in 1930, Exhibit G (pages 43 to 48)

There was no settlement in 1927. There was stock .

taking

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then but not settlement. Exhibit G does not appear to have been filed in the High Court. There was stock-taking in October 1927. The Ejman said there was litigation C. S. 44 in the High Court and that settlement might be made after all the books come back from the High Court. The settlement was made in August 1930. There was another stock-taking in March 1930. The settlement was signed on 3-8-1930. It was upto 31-3-1930. There was no settlement in March 1930. Profit and loss can be determined only after settlement. It was known after 3-8-1930. I did not go and work in No. 44. I do not know personally of happenings there. There was one Thiagaraja Iyer writing accounts there. He was in the shop on 3-8-1932. He has written in Exhibit D at page 3. He has written the first four items on that page. Inayatulla wrote only the settlement portion in Exhibit D. He did so according to Ejman Syed Hashim's directions. He gave them in our shop. Only that portion he wrote.

CIVIL & SESSIONS COURT BANGALORE DISTRICT

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The other portions have to be written by that shop people. He has to write the settlement portions for all the branches and head office. The Ejman says according to accounts to give so much to such and such a person. Inayatullah wrote the settlement portion for the head office. There was no settlement between 1926 and 1930. The accounts of staff and Kashakootal were not settled after settlement in 1926 till settlement in 1930 except of those who left service. The writing on page 101 from 9-8-1930 in Exhibit D is not Inayatulla's. It is of shop writer's. Page 68 of Exhibit C was written at the same time as the settlement of 1930. Credits for salaries etc may have been omitted by mistake and they were credited then. I do not remember why the entry is made there. Inayatullah will be able to explain. He has written the entries on page 68. Pages 66 to 73 were written in the head office shop. Myself, defendant, Hashim Saheb and

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Inayatullah alone were present at the settlement. It was at the place of sales but in an inside room. Head office accounts have not been settled at all from 1926. For branches here and in the City and in Madras accounts were settled. It may have taken 10 days or more.

Defendant checked all the books, ledger, Exhibit C, his page in the ledger and stock book (rough). It was torn away after settlement. Pages 1 to 51 of Exhibit C was written by a gumastah of No. 43. His name is Krishnaswami Mudaliar. He wrote them in our shop. It may be during June - July 1930. He was given the work as he was spare then. Thiagarajan was engaged fully in other work. He gets Rs. 20/- per mensem. He was in Service for 5 or 6 months or a year. Krishnaswami was in service for 5 or 6 years. Thiagarajan was a new man, whereas Krishnaswami was an experienced man. Entries are made in Exhibit C from the rough stock book. Inayatullah compared and saw if the values given in it tallied with

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the entries in Exhibit C. There was no certificate to that effect in it. The whole writing of 51 pages may have taken 4 or 5 days. It was mamool to write for all branches in our head office. A man of the branch concerned used to be present and dictate. Abdul Wahid has also written in Exhibit C. He was employed in No. 44 branch then. We did not ascertain from that shop if it was not possible for one of their ~~men~~ new to write the pages. Defendant did not tell me to have them written by other persons. Abdul Samad has written the settlements in 1917, 1921 and 1926. Pages 26 to 35 settlement in 1926 is in Inayatullah's writing, Exhibit H. Pages 26 to 29 are in Abdul Sammad's writing. Inayatullah has written here and there in the middle. Pages 29 to 35 are in Inaya tullah's writing. Rough stock book is either destroyed or thrown some where in the office after settlement. I do not remember if rough stock book of 1926 is filed in the High Court. Exhibit G is the

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fair stock book written in 1927. Exhibit H relates to Head Office. I do not remember who wrote the settlement prior to 1917. The stock-taking in 1926 is in Abdul Wahid's writing. Abdul Samad was in Madras branch in 1926. He was not sent for from Madras to write the settlement. I cannot say that he was not. Abdul Wahid was working in No. 44 for 10 to 15 years. He was removed 5 or 6 months ago. He was doing defendant's work after the latter left for 10 or 11 months. He and Silaiman Saheb were doing the work. Exhibit J contains the settlements in 1917, 1921 and 1926. Pages 159 to 174 are in Wahid's writing. It is stock-taking. Pages 1 to 42 of Exhibit G are in Wahid's writing. When defendant was removed both the agreements, Exhibits A & B were in force. It is usual to execute a fresh agreement each time stock is taken. That is the mamool. I do not remember if there is difference between the two agreements. Another agreement was executed at the stock-taking

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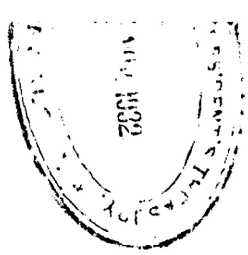
of 1926. I am the manager of D. Syed Osman & Co. The Ejman wanted the agreement as usual and took our signatures. He wanted agreement to act according to it. I did not ask the steff and others if they would execute it. The agreement was read over. If it be not signed those that do not sign will be removed.

Sd/- V.O. Abdul Rahiman
(In Tamil),
4-10-1932.

Taken down by me in open Court and int erpreted to the witness and acknowledged by him to be correct.

Sd/- C.V. Reddi,
District Judge.

SOLEMNLY AFFIRMED ON 13-10-1932:- There wa no settlement in October 1927 or in March 1930. There was only stock taking and valuation and list of outstandings by and to us was made on both the occasions. I went through the stock list and list of outstandings made in 1927 on account of C.S. 44 of 1928 in Madras High Court. Ejman put off making totals. The lists took 2 months to prepare and the Civil Suit was filed by that time. There is one branch in the city, 3 in cantonment and one in Madras.



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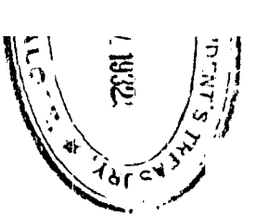
Head Office is seperate. Till 1926 the accounts of all the branches and H.O. were being settled about the same time. In 1927 and 1930 there may have been a difference of about a month. I looked into the lists of 1927 only in August 1930 at the time of settlement. The list of 1930 became ready in June 1930. Ejman did not ~~xxxxxx~~ tell us to delay settlement of 1930. He told us to make settlement about 10 days previously. The settlement was on 3-8-1930. Exhibit C & D are the settlement books. Defendant himself came and Abdul Wahid also was present when Exhibit C was written up to 68. List of stock had been given to us by No.44 in 8 or 9 stitched note-books (foolscap size) We did not ask defendant to sign for the stock list in Exhibit'C' Seperately. Defendant and Abdul Wahid had Exhibit 'C'(1 to 68) written in 5 or 6 days and checked it in a day or two. I cannot say if all were finished in 10 days. I got Exhibit C in the last of July. Defendant gave it to me. Till it was finished writing it was in the possession of No.44.

DISTRICT & SESSIONS COURT
BANGALORE
CIVIL & MILY STATION



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It was written in our shop. I did not ask that it should be written in H.O. as it was the Mamool. The Original stock list came ~~xxxx~~ to our hands when Exhibit C was begun. 10 or 15 days later I gave them to No.44 to put prices in them. It took one or two months for them to mark the prices to bring them. Exhibit C was begun after the Original stock lists were brought with prices. Exhibit 'C' comes into my possession after it is finished and at the time of settlement. I did not take Ejaman's permission to ~~delete~~ destroy the original Stock list. I do not remember if all accounts inclusive of post-cards for 1885 are filed in the Madras High Court. I do not remember if Original Stock book of 1926 was in Abdul Rahim's writing V.M. is filed in the High Court. Exhibit G of 1927 was also written in H.O. ITS original Stock-book also was destroyed. It was subsequent to August 1930. Our Ejman was present at the settlement. He has no share in No.44 branch. Syed Ooeman Co. has a share for the name and another for the

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BANGALORE
CIVIL & MILY STATION

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Capital. This was for the settlement of 1930. V.M. Abdul Rahim was an additional sharer in the accounting of 1927. He was removed in 1928 on 17th January.

Sd/- V.O. Abdul Rahimon
(In Tamil).
13-10-1932.

Taken down by me in open Court and interpreted to the witness and acknowledged by him to be correct.

Sd/- C.V. Reddi,
District Judge.

SOLEMNLY AFFIRMED AND CROSS EXAMINATION CONTINUED ON 19-10-1932.

Page 46 of Exhibit G shows the settlement. He was paid his share on 3-8-1930. A suit had been filed against him by plaintiff Co. I do not remember if it was stated in that plaint that he had a share and that no account had been settled. He did not do work in the shop after October 1927. It is Ejman's will to pay him any thing for subsequent period or not. He was not given anything as he did not work. He gave notice on 11-11-1927 to the plaintiff Co., demanding his father's share. He came one day and went away, came again one day and went away after it.

Ejman directed on 17-1-1928 his removal from that date.

DIST. & SESSIONS JUDGE BANGALORE CIVIL & MIL'Y STATION

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He was not paid any share for the settlement of 1930.

There is no necessity for Ejman to consult me before giving shares and he did not consult me for settlement of 1930.

He did not consult me even for the settlement of 1927.

I do not remember if I recommended increase or decrease in the shares settled for any person at the settlement of 1927 or of 1930. Ejman goes to Head Office and speaks to us about business. He did not himself do business there or in any of the branches. We have to tell him of the work of every employee. Defendant was the manager of No.44 from the beginning. There was joint manager with him. Plaintiff Abdul Sammad, Ziauddin and latterly V.M. Abdul Rahim were joint managers with him. Defendant may have been manager for over 15 years. In 1926 settlement defendant was given Rs.4427/8/0 for the period from 1921 to 1926 (60 months) Rs.281/13/4 stood to his credit at that settlement (p 204 of Exhibit K) compared with the settlement of 1926 there was no decrease in the pay of the establishment at

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the settlement of 1927. Defendant was given Rs.6/11/0 per month for his one Kashtakuttali. Abdul Wahid was paid Rs.25/- in each of the settlements of 1926 and 1927 and Rs.27/- in that of 1930. Abdul Alim got Rs.15/- in 1927 and Rs.17/- in 1930. Mahomed Isaac got Rs.2/8 in 1927 and Rs.5/- in 1930. All have free boarding inclusive of managers. I did not say anything that they should be paid more. Ejman's pleasure. He asked me at the time of settlement. He said an increase of Rs.2/- may be given. He did not take my opinion on the point. There was no difference in the expenditure on the establishment between 1926 and 1927. There was no difference between 1927 and 1930. Business was less. There was no account of total sales made in 1927 and in 1930. That sales were less is certain. There is account for all purchases made. There is value of old stock also in books. Profit and loss may be found from stock account, sales and purchases. Syed Hashim has a share in No.44 for 15 years. Defendant has

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been given Rs.59/13/7 per month in settlement of 1917 for 34 months. (Page 46 of Exhibit J). Rs.888/9/8 were to his credit on the date of settlement, (p.49 of Exhibit J). D. Syed Hashim has also signed on that page for his share.

Sd/-(V.O. Abdul Rahimon)
In Tamil.

Taken down by me in open Court and interpreted to the witness and acknowledged by him to be correct.

Sd/- C.V. Reddi,
District Judge.

Solemnly affirmed and further cross-examined on 1-11-1932.

Syed Hashim is the Ejman' for the Head Office and five branches. From the beginning of No.44, Ejman, Defendant and Syed Ooeman & Co., had one share each. Hashim has received share in 1917, 1921 and 1926. He has signed on pp 49, 99 and 157 of Exhibit J for receipt of shares. A beginning for 1927 stock taking is made in the same book. It is continued in Exhibit 'G'. Pp 49 to 268 of Exhibit 'G' are blank. Exhibit G did not go to the High Court in any suit. The lawyer did not want it. It had gone to Madras. So stock taking for ~~Rest~~ 1930 was not written in

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it. All books went to Madras. I do not remember when we sent Exhibit 'G' and when it came back to us. There is no record to show its going to Madras and coming back. We keep no record to show what books we sent to Madras. ~~In~~ I exercise supervision over all branches. Ejman has given me power orally to do so. The branches send for goods after consulting me and without consulting me. We are not in the habit of amking a note of total cash credit sales every year. We never did so. I and my elder brother are managers for 5 years. We ~~received~~ send returns to Income Tax Department. We show sales to them. Branches send me total sales for cash and credit. We include our sales and send to Income Tax Department. I did not note whether the sales in 1927 were more or less than other years. We only send sales to Income Tax peoples and not Jadthe books. They are not necessary for them. We have debited Rs.350/- as Income tax for 44 branch on 27th October 1927. Stock had been taken then. The figure was fixed on the average and as of

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Mammool. Rs.425/- ~~is~~ are debited in March 1930. Stock had been taken then. In both these cases it was 2 days before stock was taken. We pay income tax as a whole for H.O. and branches. Rs.1609/4/0 are entered on 27-4-1926 as paid for Income-tax. There was a settlement in April 1926. I cannot say for what period that payment was made. Abdul Khuddus was the manager then. No.44 branch's share of tax was fixed approximately. The amount of tax increases year after year. The tax was fixed accordingly to it.

Sd/- V.O. Abdul Rahimon,
(In Tamil).

Taken down by me in open Court and interpreted to the witness and acknowledged by him to be correct.

Sd/- C.V. Reddi,
District Judge.

SOLEMNLY AFFIRMED AND CROSS-EXAMINATION CONTINUED ON 7-11-32.

I did not look into the accounts after settlement of 1926 and before Stock-taking of 1927. It was after stock-taking of 1927 that ~~we~~ me came to know that business had decreased. We came to know it in ~~only~~ August 1930. We did not compare the stocks of 1927 and 1930. Accounts of 1927 and 1930 were settled at the same time. Rs.1371 and odd were debited in

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were not present when defendant signed it. Defendant did not sign the ledger Exhibit D that day. There is no reason. He signed it on 5-8-1931. Rs.496 and odd are the profits entered in the settlement of 1927.-Exhibit G. Income-tax has been paid on the sales. I cannot say what exactly was paid as tax for the branch. I do not remember what the sales were. I do not remember what amount was paid as tax for H.O. Accounts should contain the figures. There is a page for Income-tax in the ledger. In 1930 the profit was Rs.1316 and odd. Tax has been paid for it also. Tax has to be paid every year. Our accounts are settled at different periods. The Income-tax office is not concerned with our settlement. We pay tax on sales every year. I do not remember what the sales were and what tax we paid for the branch. I do not know on what basis we are taxed by the department. I do not know what percentage of sales is taken for income-tax. We have made appeals against assessments also. I do not know the reason for defendant's

To be corrected as 5/8/1930

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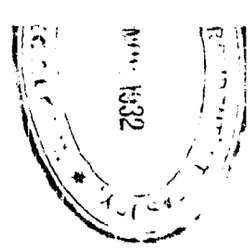
removal. I was not asked by Ejman about it. I had com-
plaint against him as he did not work hard and earn profit.
Ejman did not inform me about his intended removal of defen-
dant.e I sign papers and give instructions for suit as per
Ejman's orders. I did not apply for refund of tax saying
that no tax was payable as they do not accept these jadthi
accounts. We did not show them to the department. We do
not receive pattis every month from the branches of moneys
drawn of Kashtakootalis. If we send for such pattis they
are sent once in six months or a year. Lists of outstandings
are sent only once in six months or a year on our asking
for them. We have not got them. They will be found in
old files. The objects of monthly list of drawings provided
for in para 5 of Exhibit A is to see that excessive drawings
are not made and for the H.O. to know about them. Small
drawings of Rs.3 & 4 are made without reference to us, but
drawings of Rs.20 and 30 are made only after such reference.
After April 1926 defendant drew moneys after obtaining per-



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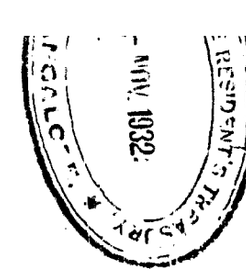
mission of the manager of the Head Office. When he asked for Rs.100 or 50 more I used to ask him why he was drawing more and tell him if he drew less more would stand to his credit. I do not remember the dates. I only used to tell him to take smaller sums. I did not suspect that at the settlement he could not get as much for his share. We used to get 2 or 3 lists in the year of drawings and of outstandings. We used to get moneys from the branches daily together with chits mentioning the amounts sent. They did not contain account of daily receipts of disbursements from the cash received we knew that business had reduced by about four annas in the rupee. Profit for the settlement of 1927 and of 1930 are entered in the Head Office against the branches in the ledgers. There is a page of Ejman Syed Hashim in the ledger.

Sd/- V.O. Abdul Rahimon,
(In Tamil)

Taken down by me in open Court and interpreted to the witness and acknowledged by him to be correct.

Sd/- C.V. Reddi,
District Judge.



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SOLEMNLY AFFIRMED ON 9-11-1932 and Cross-examination continued

Credit was not given to No.44 for Rs.350 and 425. Income tax debited as the tax was collected by the Department. The amounts payable by No.44 on the sales were settled by us and defendant with reference to total amount payable. We have paid Rs.814/11/0 on 20-11-1927 and Rs.1,467/2/0 on 28-2-1931 and 17-2-1931. Demand came for that amount. Payment was made as per assessment even in 1927. I cannot say what the amount of sales was. I cannot say it from reference to No.44's accounts. I do not remember how much. Exhibit K is the ledger for No.44. I have signed Exhibit C on 3-8-1930 for D. Syed Ooman & Co., No.5 ledger referred to in Exhibit D (p.1) is Exhibit K. The profit shown to plaintiff's firm in Exhibit 'C' is not entered in Exhibit 'D'. The entry must be in Exhibit 'D'. The brought forward figures in Exhibit 'D' are not entered. It is defendant's duty as manager to write it. I did not see the omission. I see it only now. Pp 1 to 4 are not in Imayathulla's writing.

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Share due to Syed Hashim's will be entered in his private page in the ledger. There is such a page in the H.O. accounts. The 1st entry on p.1 of Exhibit D is dated 31-7-1930. The profit as per Exhibit 'C' was not entered in Exhibit 'D' because the brought forward figures were not written. Totals are not made on p.77 of Exhibit K to carry forward to Exhibit D. The last entry on p.77 of Exhibit K is of 31-7-1932. The settlement was certainly on 3-8-1932. The share that fell to Plaintiff Company as per Exhibit 'C' has been debited to No.44 in the head Office accounts (ledger). The credit is to the plaintiff Co., I do not remember when the book got out of our hands. There is the custom of people signing in the ledger if they owe money. I do not remember who has signed so. It is at the time of settlement. Such signatures are taken in the settlement book or in the ledger. On page 215 of Exhibit D plaintiff's profit for 1927 and for 1930 is entered. I t is capital account. On page 19 of Exhibit K Rs.25,000 is

31.7.30
3-8-30

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entered. It is referred to on Page 215 of Exhibit 'D'.

The same amount is credited on p.445 of Exhibit K. The sum is due from No.44. It is shown in Exhibit G, settlement book. That amount was deducted from the assets including stock on hand and profit was arrived at. The debts is not discharged to plaintiff. The same Rs.25000 were deducted in Kuduppal in Exhibit 'C' at p.63. That sum has been deducted and profit arrived at in both the settlements of 1927 and of 1930. The ledger for October and November 1927 is not traceable just now. We sent man Hamid to Madras to our Company for it. Rs.350 and 425 debited to No.44 for Income-tax are credited in our leagers and not in Day books. Profits that come to plaintiff Co., also are credited in the ledger and not in day-book. Income-tax paid will not be debited to personal ledger but is expenditure. We have no copies of income-tax returns. It is not Inayathulla that prepares them. Head or other clerk does it. Chettiar writes them. Patterwaghi and Kuduppal pattis are thrown

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away at the settlement. They are not with us. There are no entries of profits of 1927 settlement in books other than ledger.

Sd/- V.O. Abdul Rahiman.

(In Tamil).

Taken down by me in open Court and ~~xxxxx~~ interpreted to the witness andacknowledged by him to be correct.

Sd/- C.V. Reddi,
District Judge.

TRUE COPY.

Supdt. of Copyists.

Words. 4725
Sheets. 27
Interlineations.
Alterations.
C.N.9 VAH.K

Application made..... 16-11-32
Stamp papers (or charges) called for..... 11-11-32
Stamp papers (or charges) deposited..... 11-11-32
Copy ready..... 12-11-32
Copy delivered (or posted)..... 12-11-32

Supdt. of Copyists.

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MYSORE
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In the Court of the District Judge,

Civil and Military Station of Bangalore.

Original Suit No. 24 of 1930.

P. W. 1 V. O. Abdul Rahiman, recalled and cross-examination continued on 7-12-1932:--

In Exhibit G provision has been made to deduct Rs. 25,000/- due by No. 44 to Head Office to arrive at profit. Rs. 25000/- are included in Rs. 41520/- and odd on page 46 of Exhibit G. That amount has been deducted before profit was arrived at. Rupees 25000/- were not credited in the books of No. 44 for the coming year as it is meant to be only a book adjustment for computation of profit. The same procedure was followed in the accounting of 1930.(page 63 of Exhibit C). Exhibits C and G were signed at the same time. Defendant checked them at the same time and then signed them. The tirpu was written in his presence in our shop. I do not remember at what time he came there. He was there all that day. I was also present. Our Ejman also was there. He

SESSIONS COURT
BANGALORE

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knows Tamil a little. He can read Tamil but cannot write. I cannot say if he can read the writing of the account. The writer was reading what was written and Ejman was there. The writer was Inayatullah. Defendant did not take objection then that a very small share of the profit was allotted to him. Ejman asked him if it was all right and he said "Yes". There is no debit or credit entry against him in No. 44 shop accounts. The ledger Exhibit D was signed by defendant only on 5-8-1930 as it was probably not convenient to sign it on 3-8-1932. Ejman wanted the signature on 5-8-1932. Exhibit D is personal ledger No. 6. The previous one is No. 5. It is also personal ledger. It is Exhibit K. Exhibit D is continuation of Exhibit K. I do not know if accounts relating to others than Kasthakootalis and servants are entered in the personal ledger of No. 44. I cannot say if stranger's names are written among the names on page 31 of Exhibit K. I do not remember who

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were servants there and who not. I do not know why Exhibit K was stopped and Exhibit D was opened. I did not tell him to do so. Our Ejman did not say so. I did not examine Exhibit K and see if there were blank pages. I did not check if figures had been correctly brought forward. My clerks did not do it. Ejman did not . I did not see Exhibit K before this suit was - filed. Exhibit D does not contain names of persons - other than employees and Head Office. Inayatullah wrote the settlement under Ejman's orders. Page 1 of Exhibit D has been written by writer of No. 44. Abdul Wahid was present when page 73 of Exhibit C was written. He is working in Messrs. J. B. Seth & Co. now. I do not know if Tyagaraja Iyer is also working there. He seems to be working there. No personal ledger was kept after Exhibit D. No other ledger was kept also. There is no ledger for head office for 1930. It is not available It has gone somewhere. It is not to be seen for a year

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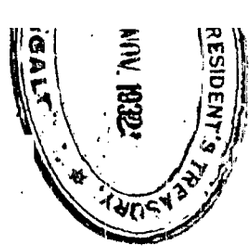
are in the ledger which is not available. I do not remember if it was available on 3-8-1930 at the time of settlement. Tirpu of several branches was made and written on 3-8-1930. It is found on pages 538, 539, 541 and 543 of Exhibit L. Inayatullah has written all the entries therein dated 3-8-1931. Daily there used to be supplies of goods to No. 44 branch and receipt of cash from it by us. They will be found in Ulloor ledger. Murugappa Chettiar accountant or others will make entries of cash received from No. 44 branch. I do not remember who of old employees are still in service in No. 44. Income tax paid is entered under expenses in the accounts. It is deducted from income and not entered in anybody's account. It will not come in ledger. Writer writes the shop accounts. Murugappa Chetty and Tiruvenkataswamy Mudaliar write the accounts. I draw money when I want and do not draw when I do not want. I do not draw according to what was allowed to



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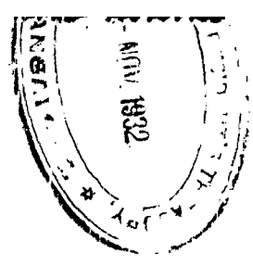
me in the settlement of 1926. There is no obstacle to my drawing at the same rate. After 3-8-1930 we did not tell defendant to draw more than Rs. 13-7-3 per mensem allowed to him at the settlement. Ejman told him he owed money and that he should draw moderately thereafter. Page 157 of Exhibit G is not in Inayatullah's writing. It is in Abdul Samad's writing. Exhibit K page 204 is not in Inayatullah's writing. It is in the writing of any employee of Head Office. It is in Abdul Samad's writing.

Re-examination:- The tirpu and the time when it has to be made are as per Ejman's wishes. Defendant has signed Exhibit J (page 107) for 1926. Profit or loss from 30-4-1926 to 27-10-27 was settled only on 3-8-1930. Credit was given to defendant only in 1930. He has signed Exhibit G (page 48) for Rs. 120-6-0, page 68 of Exhibit C also. Tiagaraj is not in No. 44 now for a long time for about 2 years. He is enimically disposed towards me. He is



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defendant's friend. His brother is with defendant.

In 1926 settlement total profit was Rs. 26566-10-6.

In 1920 it is Rs. 1316-13-6. There was no settlement

made by the time O. S. 37 of 1930 was filed in the local

District Munsiff's Court. Credit was given to him for

Rs. 60-3-0 before the decree as settlement was made by

that time. As V. M. Abdul Khuddus gave notice in

November Ejman postponed settlement of accounts from

30-4-1926 to 27-10-1927. Ejman did not share in pro-

fits of No. 44 after 1926 as the profits were small.

He gave up his shares of his own free will. Rupees

315-13-6 are credited to plaintiff company in Exhibit

L page 538 as the profit of No. 44 from 28-4-1926 to

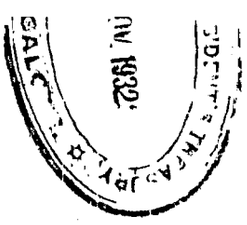
28-10-1927. Rupees 926-9-7 were credited similary for

from 29-10-1927 to 27-3-1930. The managers of the

branches give us information to furnish to income tax

office for cash sales. I have taken signatures of

persons other than defendant for settlement in ledger,



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, page 121 of Exhibit D on 5-8-1930 —— Abdul Wahid of No. 44 branch. First entry of brought forward on Exhibit D on page 101 of his writing debit entries from 9-8-1930 on the same page were made by the writer of No. 44. Branches 40 and 44 belong to the plaintiff Co. in Cantonment. Subsequent to 5-8-1930 defendant has drawn moneys - page 101 of Exhibit D.

But this does not necessarily prove that the 3rd shop also does not belong to Plff Co.

Sd/- V. O. Abdul Rahiman,
in Tamil.

Taken down by me in open Court and interpreted to the witness and acknowledged by him to be correct.

Signed/- C. V. Reddi,
District Judge.

TRUE COPY

Supdt. of Copyists.

Words 1330
Sheets 8
Interlineations.
Alterations.
Crd

Application made 8-12-32
Stamp papers or charges called for 12-12-32
Stamp papers (or charges deposited 12-12-32
Copy ready 13-12-32
Copy delivered (or posted) 13-12-32

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753

Encl-7

Notice of demand under section 29 of the Indian Income-tax Act, 1922.

To

Messrs. W. S. O. Abbas & Co.,
New Market Sqr.,
Bangalore

1. You have been assessed for the year 1932-33 to Income-tax amounting to Rs. 166-14-0 (~~in addition to which a penalty of~~ Rs. ~~has been imposed~~), as shown in the copy of the assessment form overleaf.

2. ~~You have also been assessed to super-tax amounting to Rs.~~

3. You are required to pay the amount of Rs. 166-14-0 on or before the 15th Feb. 33 to the ~~Treasury Officer~~ / ~~Sub-Treasury Officer~~ / Agent, Imperial Bank of India, at Cantonment Station, Bangalore, when you will be granted a receipt.

4. If you do not pay the tax on or before the date specified above, you will be liable to a penalty which may be as great as the tax due from you.

5. If you are dissatisfied with your assessment you may present an appeal under sub-section (1) of section 30 of the Indian Income-tax Act, 1922, to the Assistant Commissioner of Income-tax at Cantonment Station, Bangalore. within 30 days from the receipt of this notice, on a petition duly stamped in the form prescribed under sub-section (3) of section 30 and verified as laid down in that form.

Or

The assessment has been made under sub-section (4) of section 23 of the Indian Income-tax Act, 1922, because you failed ~~to make a return of your income under section 22~~ / ~~to comply with a notice under sub-section (4) of section 22~~ / ~~to comply with a notice under sub-section (2) of section 23~~ and no appeal lies. But if you were prevented by sufficient cause from making the return or did not receive the notice(s), aforesaid, or had not a reasonable opportunity to comply, or were prevented by sufficient cause from complying with the terms of the notice(s), you may apply to me, within one month from the receipt of this notice, under section 27, to cancel the assessment and proceed to make a fresh assessment.

6. The appropriate chalan should be sent along with the amount paid. Should you lose the chalans attached to this notice of demand, it will be necessary for you to apply to the Income-tax Officer for copies of fresh chalans.

7. If you remit the demand by money order, you should send it to ~~the treasury officer,~~ me, and should state on the money order form that the payment is on account of income-tax.

G Krishnadasan

Dated 30th January *1933.*

Income-tax Officer.

KMP

(Place) Cantonment Station Bangalore

I. T. 15.

NOTE.—The superfluous words in paragraph 5 should be deleted.

ASSESSMENT FORM.

Assessment for 1932-33.

District or Area Cttn Station, Bangalore.

Name of assessee M/s D.S.O. Abbas & Co.

Address New Market Sq.

Serial number.	Detailed sources of income.	Amount of income.	Tax deducted at source.		Remarks.
		Rs.	Rs.	A.	
1	Salary (including employee's provident fund contributions). ...				
1A	Annual accretion (less employee's provident fund contributions) under section 58A (f)				
2	Interest on Securities				
3	Property				
4	Business	4272			
5	Profession				
6	Other sources				

			Rs.	A.
(*i*)	Total income		4272	-
(*ii*)	Deduction under section 7(*i*) or on account of provident fund, to which the Provident Fund Act, 1897, applies.	Rs. A.		
(*iii*)	Deduction on account of recognised provident fund—			
	(*a*) Contributions			
	b) Exempted interest			
(*iv*)	Deduction on account of insurance premia			
(*v*)	Deduct sums received as dividends or from a firm the profits of which have been assessed to income-tax ...			
(*vi*)	Deduct amount of interest from tax-free securities of the Government of India or of a local Government ...			
(*vii*)	Income now to be subjected to income-tax		4272	-
(*viii*)	Rate applicable 6 (Surcharge) pies per rupee	133-8-0 33-6-0		
(*ix*)	Amount of income-tax	Rs.	166	14
(*x*)	Reduction under section 17			
(*xi*)	Amount of deductions at source from salary or interest on securities for which credit is given under section 18 (5)			
(*xii*)	Abatement on account of dividends (at pies per rupee)			
(*xiii*)	Abatement on account of income from a registered firm (at pies per rupee)			
(*xiv*)	Net amount of income-tax (~~or refund~~) ...		166	14
(*xv*)	Amount of super-tax			
(*xvi*)	Penalty under section 28 [*or* section 25 (2)] ...			
(*xvii*)	Total sum payable (~~or to be refunded~~) (in figures as well as in words)		166	14

Rupees One hundred and Sixtysix and

annas fourteen only.

Dated 30th January 1933.

Income-tax Officer.

DGFP—722IT—(G-1010)—19-1-32—4,00,000.

F-736 28-11-1931.

Encl-2

Income-tax Department.

C & E Station, Bangalore *District.*

(1) Year of assessment. 1931-32

(2) Name of Assessee (with complete address). Messrs. Hajee Hussain & Sons, C/o D. Syed Oosman & Co., Bangalore.

(3) Status :—(Whether Individual, registered or unregistered firm, Hindu Undivided Family, Company or other association of individuals.)

Individual

(4) Sources of income with exact nature of business.

Property
Business - Partnership income from D.Syed Oosman & Co., and D.S.O. Abbas & Co.

(5) Branches :—

(a)

(b)

(c)

(6) Shares in (a) Registered and

(b) unregistered Firms.

(7) Partners—(a) names with shares

(b) are they separately assessed ?

(8) Income returned. Rs.6,938/-.

(9) Accounts—(a) Books produced. No accounts

(b) Method of accounting. **(c) Accounting period.** Official year

(10) Section and Sub-section under which assessment made. 23(3)

ASSESSMENT ORDER ~~OR NOTE~~

The assessee has returned an income of Rs.6,938/-.

Property.- The nett income works out to Rs.7,167/- thus:-

Gross valuation as per statement accompanying the return			8,326
Add			
Valuation of 110 Brigade Road (omitted because it was vacant)			720
Valuation of 111 Brigade Road (shown only for half year)			240
Valuation of 4 Dickenson Road (shown only for half year)			330
			9,616
Less			
Repairs		1,603	
Vacancy - vouched for		846	
(4 Dickenson Road (¾ths portion for half year)	246		
110 & 111 Brigade Rod for ½ year	600		
	---		2,449
		nett	7,167

I. T. 88,
MG(PC—S1—243 (TI)DCF—(G-100)—2-3-27—3,00,000.

Business.- The assessee's one-third share of income in Messrs. D. Syed Cosman & Co. is Rs.6,327/- while his 1/11th share in Messrs. D. S. O. Abbas & Co. is Rs.333/-.

The total income is Rs.13,827/-. Deducting partnership income already taxed, the nett income is Rs.7,167/-.

D.T.P. 30.11.31.

DTP-KMP. Income-tax Officer.

2 Jan 1932
30/11 30/11/31

Encl 4

IN THE COURT OF THE SECRETARY TO THE RESIDENT
IN MYSORE AND COMMISSIONER OF INCOME-TAX.

Bangalore, Saturday the 31st day of May, 1924.

Before A.N.L. Cater Esquire, I.C.S., Secretary to the Resident and Commissioner of Income-tax.

Messrs. D. Syed Oosman & Co.,
New Market Square,
B a n g a l o r e. Appellants.

Income Tax Appeal Petition No.2 of 1924, against the assessment of the Collector and Assistant Commissioner of Income-tax, Civil and Military Station of Bangalore, dated the 8th March, 1924.

O R D E R.

This is one of those difficult cases in which the assessee has not kept proper accounts and has therefore been assessed on estimate and now complains that he has been assessed at too high a figure. The appellant's Advocate admitted to me that the accounts of the firm were very imperfectly kept, but he produced certain documents which apparently prove that the profits on the supply of goods to Messrs. D. Syed Oosman & Co. in Bangalore City and the profits earned on sugar and flour sales were as stated in paragraphs 1 & 2 of the Grounds of Appeal. The appellant has no just cause of complaint against a reasonable assessment on estimate if he does not keep proper accounts. But in view of the statements made before me by his Advocate I am prepared to give him relief to the following extent. His profits on Rs.17,803-15-0 out of the turnover should be calculated at $\frac{3}{4}$ per cent net; the profits earned on sugar and flour sales amounting to Rs.1,68,964-14-1 should be calculated at 1 per cent net and the profits on the balance of the turnover amounting to Rs.3,42,322-12-4 should be calculated at the figure assessed by the

Assistant

Assistant Commissioner of Income-tax - viz., a net profit of 5 per cent.

Sd/- A.N.L. Cater.

COMMISSIONER OF INCOME TAX.

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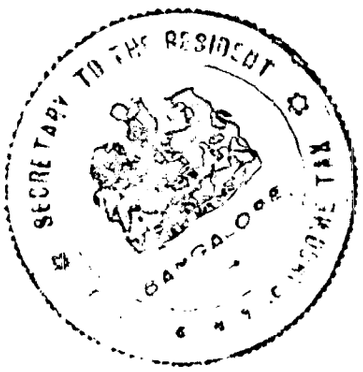

11.10.32

for COMMISSIONER OF INCOME-TAX.

IN THE OFFICE OF THE COMMISSIONER OF INCOME-TAX,

Civil and Military Station, Bangalore.

---:0:---

No. 1335. Dated the 16th February 1934.

Before:-

Major G. Kirkbride, I.A.,
Commissioner of Income-tax.

Income-tax Appeal No. 1 of 1932-33.

Messrs. D. Syed Oosman & Co.,
New Market Square,
Civil & Military Station, Bangalore. Appellants.

O R D E R.

The assessees in this case, Messrs. D. Syed Oosman & Co., wholesale and retail dealers in oilmanstores, etc., New Market Square, Bangalore, were assessed by the Collector and Income-tax Officer, under section 23(3), on an estimated income of Rs.50,000/- from business and Rs.399/- from property. The income returned by the firm was Rs.907/6/4 from business and Rs.399/- from property.

2. The assessees appealed to me under section 30, but subsequently filed a petition for the withdrawl of the appeal, as they wanted to file an application for review under section 33.

3. On an examination of the assessment records, it seemed that the assessees had concealed the income from some of their branches in the Civil and Military Station and had also deliberately furnished inaccurate particulars of their income from shops numbers 40 and 44, which they had admitted to be their branches. There was evidence to show that the real books of account maintained in the usual course of business had been suppressed and false books, deliberately prepared for income-tax purposes, produced in support of the incorrect figures furnished. I considered that the assessees should be penalised under section 28 and accordingly issued a notice to them to show cause why they should not be dealt with under that section.

4. In answer to the above notice, the assessees filed a statement before me, wherein they represented that, in submitting their return ~~return~~

return for 1932-33, they were not actuated by any motive to deceive the Government; that the inaccuracies noticed in the particulars furnished by them were not deliberate; that they had no branches in Cantonment except shops Nos. 40 and 44; and that they had not therefore concealed the income from any of their branches. In the circumstances, they prayed that no action be taken against them under section 28. They also filed a revised statement of account showing a net profit of Rs.15,245/- from business and requested that the whole case might be reviewed and the assessment, which was unduly heavy and out of all proportion to their actual income, be reduced. At the hearing of the case, Mr. Brooke Elliott, the learned Counsel for the assessees, filed an affidavit sworn to by V.O. Abdul Rahiman, the Managing Partner of the assessee firm, to the effect that, barring shops Nos. 40 and 44, the assessee firm had no other branches in the Civil and Military Station.

5. I shall first deal with the question whether the charge against the assessees that they concealed the income from some of their branches has been established. In his assessment order, the Income-tax Officer says that the assessee "has not taken into account the total sales of three other branches which, as the assessee himself has admitted in the course of judicial proceedings in the District Court, belong to him". The judicial proceedings referred to are those connected with O.S.No.29 of 1930 and O.S.No.24 of 1930 on the file of the District Judge, Civil and Military Station, Bangalore. In the former case (O.S.No.29 of 1930), which was a suit brought by the assessee firm against the Polson Manufacturing Company for damages for malicious prosecution, Mr. D. Syed Hashim, the principal partner of the assessee's firm, said, in the course of his deposition, that besides the head office, he had five branches in the Cantonment. The Managing Partner now explains in his affidavit that this statement of Syed Hashim has no reference to Messrs. D. Syed Oosman & Co., the assessee firm; that Mr. Syed Hashim was evidently making a personal statement regarding the

different

different shops in which he held a share; and that Messrs. D. Syed Oosman and Company, as a firm, are not entitled to a share in the profits of any of those shops, except shops numbers 40 and 44.

In the other case, O.S.No.24 of 1930, which was a suit brought by the assessee firm against one of their old partners, who was in charge of branch No.44, Mr. V.O.Abdul Rahiman, the Managing Partner, deposed in his examination in chief that there were three branches in Cantonment. He now explains that this statement was made through an oversight and points out that, in his re-examination in the course of the same deposition, he had corrected this mistake by stating that "Branches 40 and 44 belong to the plaintiff's company in Cantonment". I have seen a certified copy of this deposition and am satisfied that it does not prove conclusively that the assessee firm had another branch in addition to shops Nos. 40 and 44.

From the assessment records it would appear that the three other branches referred to in the Income-tax Officer's order are (1) D.S.O. Abbas and Co., 39, New Market Square, (2) D.S.Oosman & Co., 43 A, New Market Square and (3) one shop said to have been disposed of in December 1931. As regards shop No.39, D.S.O. Abbas & Co., the assessees have produced evidence before me to show that the income from this shop has been separately assessed for the same year (assessment year 1932-33). Evidently therefore this shop is not a branch of the assessee firm and has to be left out of account. As regards shop No.43A, D.S.Oosman & Co., I have the sworn statement of the Managing Partner that it is not a branch of the assessee firm. It is observed that a notice was issued to the assessees under section 22(4) for the production of the accounts of shops Nos. 39 and 43A. The assessees did not produce the accounts nor did they say that they had no concern with these shops. The Income-tax Officer therefore presumed that they were branches of the assessee firm; but, in view of the fact that one at least (No.39) of the two shops has subsequently been found to be not a branch of Messrs. D.Syed Oosman & Co., but an independent concern, it is not safe to conclude that 43A is a branch,

merely

merely ~~exam~~ because the assessees did not respond to the notice issued to them under section 22(4).

Information regarding the number, name or location of the branch said to have been disposed of in December 1931 is not available in the assessment records and, on the face of the sworn statement before me, I am unable to agree that the assessees had any connection with such a shop.

In the above circumstances, the Income-tax Officer's ~~statement~~ conclusion that the assessee has not taken into account the sales of three other branches cannot be accepted.

6. At this stage, it is necessary for me to consider whether the assessment, which was based on the assumption that the assessee firm had 5 branches, should not be reduced. The assessees have filed a statement before me showing a net profit of Rs.15,245/- from business, but this cannot obviously be accepted. An assessee, who does not produce proper accounts, can have no just cause of complaint against a reasonable assessment on estimate; but, as the Income-tax Officer evidently fixed the income at Rs.50,000/- on the basis of 5 branches, with the correctness of which I am not satisfied, I am prepared to reduce the assessment by Rs.15,000/-. This I consider is a very fair estimate. The total assessable income shall therefore be fixed at Rs.35,399/- and the assessment revised accordingly.

7. The second part of the charge against the assessees is that they deliberately furnished inaccurate particulars of their income. It was absurd to the point of impertinence to have returned an income of Rs.907/- on an admitted turnover of over 4½ lakhs. The explanation offered by the assessees before me is that this was not done deliberately in order to evade a proper assessment; that the assessees are mostly illiterate in English and ignorant of the provisions of the income-tax law; that they did not attach any importance to the printed return which they merely regarded as a formal document for commencing assessment proceedings; and, irrespective of the figures entered

entered in the return, they expected to be assessed, as in previous years, on certain fixed percentages on the total turnover as disclosed by the head office books. If the usual mode of assessment had been followed, the assessable income would have worked out at about Rs.13,420/- this year and this, the assessees say, is what they had expected the Income-tax Officer to do. The record of assessment of these assessees for the previous years lends support to the above explanation; but I take this opportunity of warning the assessees that a person, who makes a false return, as the assessees have been doing year after year, is liable to be punished under the provisions of the Indian Penal Code on a charge of furnishing false information and that "usage, practice and precedent", on which they now seek to justify their action, will not be accepted as a valid defence to such a charge. Moreover, the charge against the assessees is not confined to making a false return. The particulars of sales and the books of account which they subsequently produced before the Income-tax Officer were also false. There was ample evidence in the books themselves to show that they were specially prepared for income-tax purposes. The real books of one of the shops (branch No.44) were subsequently discovered. They were produced in the District Court by the firm in O.S.No.24 of 1930. The assessees had denied credit sales in the branches and had produced a note book, as the only account kept for the branches, showing the daily cash sales. But it was found that (1) a Daily Sales Book for cash sales running into several volumes, (2) a Day Book for credit sales, (3) Ledgers for credit transactions and (4) a "Kurippu" Book containing all the daily transactions of the shop, purchases and sales, cash as well as credit, were actually maintained. The assessees now admit that the particulars of sales furnished to the Income-tax Officer in respect of Branches Nos.40 and 44 were not correct. Their explanation for this discrepancy is that these particulars were compiled from the books maintained at the head office and that the branches had acted dishonestly in not disclosing their actual sales to the head office. They now admit sales in the two branches to the extent of Rs.1,63,000/-

whereas

whereas, according to the figures furnished to the Income-tax Officer, the sales amounted to Rs.48,000/- only. The assessees' explanation cannot be believed. It is ridiculous to suggest that the assessees had not even a rough idea of the volume and nature of business done at the branches (which, I understand, are situated very close to the head office) and were "deceived" by them. The account books maintained in the branches were not produced. The Managing Partner was aware of the existence of these books as will be seen from his deposition in the District Court in O.S.No.24 of 1930. He admits having told the Income-tax Officer that the sales note books produced were the only accounts the assessees had in respect of the branches, but explains that what he actually meant was that they were the only books maintained in the Head Office for the branches. The Income-tax Officer would have done well if he had recorded a statement from the Managing Partner regarding the accounts of the branches. Even assuming that he did not specifically ask the assessees to produce the books which were being maintained in the branches themselves, I do not consider that the assessees were justified in concealing them, and I must conclude that they were deliberately withheld. Again, such accounts as were produced were obviously specially prepared.

There can be no possible doubt that the assessees furnished inaccurate particulars of their income, concealed their real books and produced false ones and that all this was done deliberately in order to evade the full amount of income-tax due to Government. There has been a gross misstatement of income and I consider this to be a fit case for the levy of a substantial penalty under section 28 of the Act. Having regard to all the circumstances of the case, I fix the penalty at Rs.2,000/-. I also warn the assessees that, on the next occasion they are found guilty of filing a false return, the

Department

Department will not hesitate to prosecute them.

Major,

COMMISSIONER OF INCOME-TAX.

To

Messrs. D. Syed Osman & Co.,
through their Advocate
Mr. J. L. D'Silva, B.A., B.L.,
Lady Curzon Road, Bangalore.

The Collector & Assistant Commissioner of Income-tax,
Civil & Military Station, Bangalore, with the assessment
records.